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THE  
EQUITY DRAFTSMAN,

BEING A SELECTION OF

*Forms of Pleadings*

IN

SUITS IN EQUITY.

ORIGINALLY COMPILED BY

F. M. VAN HEYTHUYSEN, ESQ.,

BARRISTER AT LAW.

REVISED AND ENLARGED,

WITH NUMEROUS ADDITIONAL FORMS AND PRACTICAL NOTES,

BY EDWARD HUGHES, ESQ.,

OF LINCOLN'S INN, BARRISTER AT LAW.

*Fourth American,*

FROM THE LAST LONDON EDITION,

WITH COPIOUS NOTES AND REFERENCES TO AMERICAN CASES,

BY A MEMBER OF THE PHILADELPHIA BAR.

PHILADELPHIA:

H. P. & R. H. SMALL,

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# PUBLISHERS' ADVERTISEMENT

TO THE

FOURTH AMERICAN EDITION.

110760

ANOTHER edition of this valuable collection of Equity Precedents having been called for, the Publishers have caused copious notes and references to the American cases to be added to it, with the hope of rendering the work still more acceptable to the Profession. The object of the Editor, in preparing the notes, was not to present a series of essays, but rather to bring to the immediate notice of the draftsman, from the Reports of the different States, a body of references which might be of practical convenience or service to him, while engaged in the preparation of his pleadings: accordingly, citations have been made from the decisions of all the States, and authorities have been accumulated, so as to indicate, if possible, to each practitioner, some of the adjudications of his own tribunals.

PHILADELPHIA, APRIL, 1861.





# ADVERTISEMENT

TO THE

SECOND LONDON EDITION.

---

A SECOND EDITION of this work (which was originally published in one volume,) having been for some time in request, and the original Author laboring under that disorder which ultimately proved fatal to him, the present Editor was induced to undertake the task of preparing a new edition, and, with a view to render the work of greater utility in practice, he proposed to adopt an alphabetical arrangement of the subject-matter under new titles, and to add short notes of points of practice, which might be useful to the student in framing pleadings; with this design, it became necessary to re-model the former edition, and to supply various deficiencies.

To point out more particularly the alterations which have been made, it is necessary to state, that some of the forms inserted in the first edition have been omitted, but such only as were found to be of no utility in practice; matters in *bankruptcy* and *lunacy*, not coming strictly within the title of the work, have also been omitted, and this the Editor was the more readily induced to do, as the various modern Treatises on the Bankrupt Law, and Mr. Collinson's Treatise on Lunacy, contain everything which is useful.

A great variety of forms of pleadings, collected by the present Editor, have been introduced, and he has availed himself of several valuable forms, to be met with in Reports lately published. Common forms have also been prefixed to several divisions, and introductory observations added in their appropriate parts, as to the mode of framing different species of pleadings; where, however, the observations necessary to have been introduced, in order to afford a correct view of any particular subject, as, for example, under the title of Pleas, would have extended to

great length, reference has been made to those works where all the learning and cases will be found collected.

The new Orders in Chancery having altered the practice, as stated in some of the notes which have been printed previously to the issuing of those orders, the Editor deemed it advisable to insert them, and a full index is also added to them.

An Epitome has been added in the margin wherever requisite, and a new and copious Index is inserted, with reference to the Table of Contents.

Having thus explained, as shortly as possible, the nature and design of the alterations which have been made, the Editor submits the work to the indulgence of a candid and liberal Profession; fearful however, that many errors and omissions, notwithstanding the pains which have been bestowed, may yet be found in the work, the Editor will feel happy in receiving any suggestions which may occur to the reader.

To those friends who have favored him with the loan of any pleadings, the Editor begs leave to return his sincere thanks for their kindness.

E. H.

40, CHANCERY LANE,  
SEPTEMBER, 1828.



# P R E F A C E

TO THE

## THIRD AMERICAN EDITION.

---

THIS work, in the hands of the learned Editor of the second English Edition, has been so much enlarged and improved, as to render it a new work. It is now the best Treatise upon Equity Pleading extant.

It was desirable, therefore, that no part of so excellent a work should be lost. Nothing has been omitted which possibly might be useful in practice. The precedents relating to Tithes have been cut out, being of no use in this country. Other portions of the work might also have been omitted, but as the practice is different in different States, it was considered better to retain a little which might be of no use here, rather than hazard the loss of something useful elsewhere.

In bringing the two volumes into one, convenience and economy have been regarded; and the Table of Contents and General Index revised to conform to the present edition.

JANUARY, 1843.



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# FORMS OF PLEADINGS

IN

## EQUITY.

### CHAPTER I.

#### THE FORMAL PARTS OF A BILL IN EQUITY.

AN ORIGINAL BILL praying relief usually consists of Nine Parts: (a)

- I. The address.
- II. The parties complainants and their descriptions.
- III. The statement of the plaintiff's case, commonly called the stating part of the bill.
- IV. The general charge of confederacy against the persons complained of.
- V. The pretences and charges, commonly called the charging part of the bill.
- VI. The general averment that the acts complained of are contrary to equity and tend to the injury of the complainants, and that they have no remedy, or not a complete remedy, without the assistance of the court.
- VII. The interrogating part.
- VIII. The prayer of relief according to the case made, concluding always with a prayer of general relief at the discretion of the court.
- IX. The prayer of process.

*The parts of a bill.*

In Chancery.

To the Right Honorable John Singleton Lord Lyndhurst

I. THE ADDRESS. (b)<sup>a</sup>

(a) See Lord Redesdale's Treatise, p. 41; 2 Madd. Ch. Pr. 166.

(b) The form of the address is always prescribed by the court upon every change

1. In Chancery

<sup>a</sup> The rules of practice in the several States, generally prescribe the address of bills. The 20th of the Equity Rules of the United States Courts declares, that

## Baron Lyndhurst of Lyndhurst in the county of Southampton Lord High Chancellor of Great Britain.

of the custody of the seal, or alteration in the style of the person to whom it is committed. When there are Lords Commissioners for the custody of the Great Seal, the address is thus: '*To the Right Honorable ———, and ———, Lords Commissioners for the custody of the Great Seal of Great Britain;*' or if there is a Lord Keeper, then thus: '*To the Right Honorable ———, Lord Keeper of the Great Seal of Great Britain:* When the person holding the seals is a party, or the seals are in the king's hands, the address is thus: '*To the King's Most Excellent Majesty in his High Court of Chancery.*'

"every bill, in the introductory part thereof, shall contain the names, places of abode and citizenship, of all the parties, plaintiffs and defendants, by and against whom the bill is brought. The form, in substance, shall be as follows: To the judges of the Circuit Court of the United States, for the district of —, A. B., of —, and a citizen of the State of —, brings this his bill, against C. D., of —, and a citizen of the State of —, and E. F., of —, and a citizen of the State of —. And thereupon your orator complains and says, that, &c." The introduction must correctly state the name, description, and place of abode of each plaintiff and defendant, so that it may be known where, and to whom to resort, in order to enforce obedience to any order or process of the court. 1 Dan. Ch. Pr., (Boston ed. 1846;) *Vose v. Phillbrook*, 3 Story, 335; see *Smith v. Smith*, 23 Eng. L. & Eq. Rep. 266. Mr. Daniell, (Ch. Pr. 409,) says the modern practice is not to demur or plead to the bill, if it mis-states the plaintiff's residence, but to move that the plaintiff may give security for costs, and that, in the meantime, proceedings may be stayed. A demurrer, or plea, in the nature of a plea in abatement, is authorized by *Winnipiseogee Lake Company v. Worster*, 9 Foster, 433. In the courts of the United States, where the jurisdiction depends on citizenship, the fact of citizenship must clearly appear, on the face of the bill. *Dodge v. Perkins*, 4 Mason, 435; *Bingham v. Cabot*, 3 Dall. 382; *Jackson v. Ashton*, 8 Peters, 148. The want of a proper averment, in respect of citizenship, may be taken advantage of by way of demurrer. Story, Eq. Pl. § 49.

It was formerly held, in some of the Circuit Courts, that the averment of citizenship, to give jurisdiction, must be proved on the general issue. As a consequence of this view, if, at any stage of the cause, it appeared that the plaintiff's averment of citizenship was not true, he failed in his suit. But it is now held, and has been so held for many years, that if the defendant disputes the allegation of citizenship, he must plead the fact in abatement of the suit; and this must be done in the order of the pleading, as at common law. *Jones et al. v. League*, 18 How. 81. It is held, in the same case, that a change of citizenship from one State to another, must be made with a *bona fide* intention of becoming a citizen of the State to which the party removes.

A corporation is not, *per se*, a citizen, within the meaning of the Constitution of the United States, Art. III. sec. 2; but when it sues, or is sued, the governing officers, by whatever name called, are the substantial party; and if they are citizens of the State which created the corporation, and the other party is a citizen of another State, the Federal Courts have jurisdiction. It is not the stockholders, or corporators in general, but the president and directors, or other governing officers, to whose citizenship the court will look. See opinion of Mr. Justice Woodward, in 2 Philadelphia Reports, p. 23, in the case of *Wheeden v. The Camden and Amboy Railroad and Transportation Company*, where the former authorities are ably reviewed. See also, *Marshall v. The Baltimore and Ohio Railroad Company*, 16 How. 314. In the latter case, the declaration set forth, that the "defendants are a body corporate, by the Act of the General Assembly of Maryland;" and it was held a sufficient averment, that the real defendants were citizens of that State. This form of averment has been used for many years. It was held, by Mr. Justice Woodward, *supra*, that the presumption, that the president and directors are citizens of the State by which they have been incorporated, and wherein their business is transacted, is not rebutted by the fact, that they hold property and transact business, through agencies, in the State where they are sued. In *Gassies v. Ballou*, 6 Pet. 761, the petition alleged, that "the defendant had caused himself to be naturalized an American citizen, and that he was, at the time of filing the petition, residing in the parish of West Baton Rouge." This was held to be a sufficient averment, that he was a citizen of the State of Louisiana; and the court said: "a citizen of the United States, residing in any State of the Union, is a citizen of that State."

\*In the Exchequer.

To the Right Honorable John Charles Herries Chancellor and Under-treasurer of his Majesty's Court of Exchequer at Westminster, to the right Honorable Sir William Alexander Knt. Lord Chief Baron of the same court and to the rest of the Barons there.

2. *In the Exchequer.*

To the Right Honorable J. P. Esq. Lord Mayor of the City of London, and to the Worshipful his Brethren the Aldermen of the same city.

3. *In the Lord Mayor's Court of London.*

In the Chancery of the Duchy }  
and County of Lancaster. }

To the Right Honorable A. B. Chancellor of the Duchy and county of Lancaster and one of his Majesty's most Honorable Privy Council.

4. *In the Chancery of the Duchy and County of Lancaster.*

In the Chancery of the Great }  
Sessions for Carmarthenshire. }

To the Honorable J. H. and J. M. his Majesty's Justices in and for the several counties of Carmarthen, Pembroke, and Cardigan, the county of the Borough of Carmarthen, and the town and county of Haverfordwest.

5. *In the Chancery of the Great Sessions for Carmarthenshire.*

Humbly complaining sheweth unto your lordship your orator [*or oratrix*] A. B. of — in the county of —, That, &c.

*If a Peer (c) joins with commoners, then thus :*

Complaining sheweth unto your lordship your orator the Right Honorable George Lord K. of, &c. and humbly complaining shew

II. THE INTRODUCTION AND NAMES OF THE PARTIES COMPLAINANTS, AND THEIR DESCRIPTIONS.<sup>b</sup>

1. In Chancery.

(c) The word '*humbly*' is always omitted in the commencement of a bill by a Peer.

<sup>b</sup> There are many essential differences between law and equity, as respects the parties to a suit. Equity requires that all persons materially interested in the subject of the suit ought to be made parties, either as plaintiffs or defendants, in order to prevent a multiplicity of suits, and that there may be a complete and final decree between all parties interested; but this rule is subject to many exceptions, and is more or less within the discretion of the court, and ought to be restricted to parties whose interests are involved in the issue, and to be affected by the decree; and the relief granted will always be so modified as not to affect the interests of others. *Mechanics Bank v. Selon*, 1 Pet. 299; *Story v. Livingston*, 13 Id. 359; *Hussey v. Dole*, 24 Maine, 20; *McConnell v. McConnell*, 11 Verm. 290; *Noyes v. Sawyer*, 3 Id. 160; *Crocker v. Higgins*, 7 Conn. 342; *New London Bank v. Lee*, 11 Id. 112; *Hawley v. Cramer*, 4 Cow. 717; *Oliver v. Palmer*, 11 Gill & J. 426; *Clark v. Long*, 4 Rand. 451; *Vaun v. Hargett*, 2 Dev. & Bat. Ch. 31; *Frazer v. Legare*, 1 Bailey, Ch. 389; *Lucas v. Bank of Darien*, 2 Stewart, 280; *Park v. Ballentine*, 6 Blackf. 223. See also, *Mandeville v. Riggs*, 2 Pet. 482; *Caldwell v. Taggart*, 4 Id. 190; *West v. Randall*, 2 Mason, 181; *Brasher v. Van Cortlandt*, 2 Johns. C. R. 242. An exception to the above rule is where a party is without the jurisdiction, or where the bill seeks a discovery of the

unto your lordship your orators G. H. of — in the county of — merchant and J. B. of — in the county of — gent. That, &c.

proper parties, and these facts are set forth in the bill; or where the parties are very numerous, or where a few sue for the whole in a question of general interest. *West v. Randall*, 2 Mason, 181; *Robinson v. Smith*, 3 Paige, C. R. 222. But the Supreme Court of the United States will not make a final decree upon the merits of a cause, unless all persons who are essentially interested are made parties to the suit, although some of those persons are not within the jurisdiction of the court. *Russell v. Clark*, 7 Cranch, 69. And where the plaintiff does not either in the prayer for process, or by allegation in the bill, designate those who are to be made defendants, the omission is fatal. *Elmendorf v. Delancey*, Hopk. 555. See also, *Verplanck v. Mercantile Insurance Company of New York*, 2 Paige, C. R. 438; *Talmage v. Pell*, 9 Id. 410; *Lucas v. Bank of Darien*, 2 Stewart, 280; *Green v. McKenney*, 6 J. J. Marsh. 193.

Parties having no community of interest, or claiming distinct rights, cannot be joined in the same bill; *Armstrong v. Athens County*, 10 Ohio, 235; *Barry v. Rogers*, 2 Bibb, 314; *Ohio v. Ellis*, 10 Ohio, 456; but all persons having the same interest, should stand on the same side of the suit; but if any such refuse to appear as plaintiff, they may be made defendants, their refusal being stated in the bill. *Contee v. Dawson*, 2 Bland, 264. See also *Pogson v. Owen*, 3 Dessau, 31; *Cook v. Hadly*, Cook, 465; *Smith v. Sackett*, 5 Gilman, 534. Where a general right is claimed against several distinct persons, they may all be joined in one suit. *Vann v. Hargett*, 2 Dev. & Bat. Ch. 31. And persons holding distinct interests under the same title, may join in a suit for investigating their equity. *Tylford v. Henderson*, 1 A. K. Marsh. 483. See also, *Scrimgeur v. Buchannon*, 3 Id. 219; *Fellows v. Fellows*, 4 Cow. 682. So, also, separate and distinct parties may join in a suit to restrain a common nuisance; *Murray v. Hay*, 1 Barb. Ch. R. 59; and different creditors having a common interest in the relief sought; *Conn v. Port Henry Iron Company*, 12 Barb. 27; and obligors and obligees; *Young v. Lyons*, 8 Gill. 162; and all parties having an interest in an equity of redemption, or a residuary interest in settling the matters of the bill. *Hall v. Hall*, 1 Texas, 526; *Hoxie v. Carr*, 1 Sumner, 173. But where a person has a mere interest in the question involved in a suit arising out of a collateral liability, such interest does not render him a necessary or even a proper party. *Austin v. Richardson*, 1 Gratt. 310.

Equity, however, will not decree between parties having adverse interests, where the same person represents both parties. *Ford v. Whedbee*, 1 Dev. & Bat. 16. Nor is an interest, contingent on the event of a suit, such a one as to make the party having it a necessary party. *Barbour v. Whitlock*, 4 Monr. 180.

Parties having conflicting interests, each claiming title to the property in dispute to be in himself, cannot unite as plaintiffs; and a bill containing an averment that one of the plaintiffs is entitled, and that if he is not, his co-plaintiff is, cannot be supported; *Ellicott v. Ellicott*, 2 Md. Ch. Decis. 468; but where one of the defendants had sold the land in controversy, and conveyed it with covenants of seisin and warranty, it was held that he still had such an interest in the question of title, by reason of his covenants, as to make it proper that he should be joined in the suit. *Hartford v. Chipman*, 21 Conn. 488.

The process alone, and the return upon it, are looked upon as determining who are parties, if there is not a special entry showing the appearance of some one not served with process. *De Wolf v. Mallett*, 3 Dana, 214. See also *White v. Park*, 5 J. J. Marsh. 603; *Estill v. Clay*, 2 A. K. Marsh. 497. And where no order of publication against absent defendants was annexed to the certificate of the printer, or identified by it, and there was no appearance as to those parties, it was held that they could not be considered as having been made parties; *Young v. Pate*, 3 Dana, 306; even a publication against persons not made defendants to the bill, does not make them parties to the suit; *Leicher v. Schroeder*, 5 J. J. Marsh. 513, nor where their names are inserted in the bill, after publication, are they considered as properly before the court; *Taylor v. Bate*, 4 Monr. 267; but where a decree has been reversed for the insufficiency of publication, by an absent defendant, he will, on the return of the cause, be regarded as a party to the suit without further service of process. *Lawlins v. Lackey*, 6 Monr. 70.

No one need be made a party complainant, in whom there exists no interest, and no one a party defendant, from whom nothing is demanded, and against whom the complainant can have no decree. *Kerr v. Watts*, 6 Wheat. 550. See also, *Todd v. Sterrett*, 6 J. J. Marsh. 425; *Duncan v. Mizner*, 4 Id. 443; *Gilham v. Cairns*, Breese, 124; *Reid v. Vanderheyden*, 5 Cow. 719. And where the testimony of persons materially



Humbly complaining sheweth unto your honors your orator A. B. 2. In the Ex-  
 \*of — in the county of — debtor and accountant to his majesty chequer.

[ \*3 ]

interested in the subject of a bill is taken in the case, and they expressly disclaim all interest, this supersedes the necessity of their being joined as parties. *McConnell v. McConnell*, 11 Verm. 290. See also, *Johnson v. Rankin*, 3 Bibb, 86. A person having no interest, and who might be examined as a witness, cannot be made a party; *Reeves v. Adams*, 2 Dev. Ch. 192; but any person may be properly made a party to a petition filed to reach a fund in chancery for distribution, who ought to have been made a party to the original bill. *Hayes v. Miles*, 9 Gill & J. 193. In a bill for discovery and for a conveyance of land, all persons interested in the land ought to be made parties. *Key v. Lambert*, 1 Hen. & M. 330. And a person may be made party to a bill for the purpose of discovery only. *Oato v. Easley*, 2 Stewart, 214.

A third party, acting as umpire between two others, is not a necessary party to a suit between the two, it not appearing that he had any interest therein; *Neale v. Keele*, 2 Monr. 31; nor a sheriff who holds money in litigation as a mere depository. *Smith v. Rogers*, 1 Stew. & Port. 317.

A magistrate, before whom a judgment was rendered, is not a proper party defendant to a bill to restrain proceedings on it. *Burpee v. Smith*, Walk. Ch. 327. Nor is a sheriff a necessary or proper party to a bill for an injunction, merely because he has in his hands the execution sought to be enjoined. *Shrader v. Walker*, 8 Ala. 244. Nor slaves, in a bill between third parties, involving their right to freedom. *McCandlish v. Edloe*, 3 Gratt. 330. Nor an officer who merely proceeds to collect an execution put into his hands as an officer. *Lackay v. Curtis*, 6 Ired. Eq. 199. And where an allegation of interest in a third person, not a party to the suit, is denied and not proved, it cannot be assigned for error that such person was not made a party; *Bourbon v. Whitlock*, 4 Monr. 180; and a suit cannot be maintained in the name of an attorney in fact. *Jones v. Hart*, 1 Hen. & M. 470.

Where the court is called upon to dispense with a proper party, the cause should be stated in the bill. *Gilham v. Cairns*, Breese, 124; *Vann v. Hargett*, 2 Dev. & Batt. Ch. 31. And where a person has religious scruples against being a party in a suit, he may sue by his *prochein ami*. *Malin v. Malin*, 2 Johns. C. R. 238.

It is useless and improper to make the counsel of a person a party to a mere bill of discovery, as to papers alleged to be in his possession, even if the matters inquired of by the bill could be properly disclosed by the counsel, if called as a witness against his client; *Wakeman v. Bailey*, 3 Barb. Ch. R. 482; but where third persons have the possession of books and papers, it is proper to make them parties defendant. *Morley v. Green*, 11 Paige, 240.

If a party to a suit in chancery becomes insolvent or bankrupt pending the suit, his assignees must be made parties before the cause can be heard. *Storm v. Davenport*, 1 Sandf. C. R. 135. And to a bill by the assignee of a judgment, the assignor should be a party. *McKinnie v. Rutherford*, 1 Dev. & Bat. 14. See also, *Elliott v. Waring*, 5 Monr. 338; *Morey v. Forsyth*, Walk. Ch. 465; *Mumford v. Sprague*, 11 Paige, 438; *Bruen v. Crane*, 1 Green, Ch. 347; *Adair v. Caldwell*, 1 A. K. Marsh. 55. As to persons necessary to be made parties in assignments of choses in action, see *Ward v. Van Bokkelen*, 2 Paige, C. R. 289; *Brockway v. Copp*, 3 Id. 539; *Everett v. Wiron*, 1 S. & M. Ch. 67; *Bradley v. Morgan*, 2 A. K. Marsh. 369. On a bill brought against the obligor in a bond which had been assigned to a third party, to annul deeds of the defendant, alleged to be fraudulent as to creditors, it was held that the assignee was a necessary party complainant. *Coale v. Mildred*, 3 Har. & J. 278. And to a bill on a bond by an assignee, the assignor is a necessary party when the bond was not assignable at law at the time of the assignment. *Gatewood v. Rucker*, 1 Monr. 21. See also *Forman v. Rodgers*, 1 A. K. Marsh. 426; *Kennedy v. Davis*, 7 Monr. 372; *Allen v. Crockett*, 4 Bibb, 240; *Lemmon v. Brown*, Id. 308; *Sanders v. Macey*, Id. 457; *Hancock v. Becham*, 5 Litt. 135; *Anderson v. Wells*, 6 B. Monr. 540.

The assignee of a patent in part may maintain a suit in law or equity for a violation of the patent without joining the patentee; *Brooks v. Bicknell*, 3 McLean, 250; but a mesne assignee of a mortgage, who has parted with all his interest, is not a proper party to a bill in equity to redeem, if he has never received any rents and profits; nor, it seems, if he has; *Lennon v. Porter*, 2 Gray, (Mass.) 473. A bill against a person and the "heirs" of another, not naming such heirs, does not make them parties to the suit. *Moore v. Anderson*, 1 Ired. Ch. 411. As to who are to be made parties in suits by or against the personal representative, see *West v. Randall*, 2 Mason, 181; *Potter v. Gardner*, 12 Wheat. 498; *Mayo v. Tomkies*, 6 Munf. 520; *Coster v. Clarke*, 3 Edw. Ch. 428; *Cabeen v. Gordon*, 1 Hill, Ch. 51; *Vanleave v. Beam*, 2 Dana, 155; *Smith v. West*, 5 Litt. 48; *Carr v. Callaghan*, 3 Id. 365; *Lee v. Marshall*, 2 Monr.

as by the records of this honorable court and otherwise it doth and may appear, That, &c.

3. In a suit in *Chancery* by a *mayor and commonalty and citizens of the city of London*, That, &c. Humbly complaining show unto your lordship your orators the

4. In a suit by a *feme covert*(d) whose husband is made a defendant. Humbly complaining showeth unto your lordship your oratrix A. B. of — in the county of — the wife of L. B. of the same place esq. (a defendant hereinafter named) by C. D. of — in the county of — esq. her next friend, That, &c.

(d) It sometimes happens that a married woman claims some right in opposition to rights claimed by her husband; as the wife therefore, being under the disability of coverture, cannot sue alone, the bill must be exhibited in her name by her next friend;

30; *Wilkenson v. Perrin*, 7 Monr. 214; *Hawkins v. Craig*, 1 B. Monr. 27; *Beall v. Taylor*, 2 Gratt. 532; *Gary v. May*, 16 Ohio, 66; *Allen v. Simons*, 1 Curtis, C. C. 122.

A bill against heirs and executors, for conveyance of land sold by the testator to the complainants, should mention their names; and process should be issued against them, making them parties. *Huston v. McClarty*, 3 Litt. 274. And as to where heirs should be made parties, see *Madison v. Wallace*, 2 Dana, 61; *Moring v. Lucas*, 4 Call. 577; *Schermerhorn v. Barhydt*, 9 Paige, C. R. 28; *Young v. Bilderback*, 2 Green, Ch. 206; *Steele v. Steele*, 4 J. J. Marsh. 231; *Duncan v. Wickliffe*, 4 Leam. 452. And all the distributees are necessary parties to a bill for distribution. *Hawkins v. Craig*, 1 B. Monr. 27. See also *Kellar v. Balor*, 5 Id. 573; *Chinn v. Caldwell*, 4 Bibb, 543; *Messervy v. Barelli*, Riley, Ch. 138. As to the necessary parties to a suit by or against corporations, see *West v. Randall*, 2 Mason, 181; *De Wolf v. Mallett*, 2 J. J. Marsh. 401; *Mandeville v. Riggs*, 2 Pet. 482; *Beatty v. Kurtz*, Id. 566; *Walker v. Hallett*, 1 Ala. U. S. 379; *Fulton Bank v. Sharon Canal Company*, 1 Paige, C. R. 219; *City of Louisville v. Bank of United States*, 3 B. Monr. 138; *McConnell v. Gardner*, 1 Morris, 272; *Mann v. Bruce*, 1 Halst. Ch. (N. J.) 413; *Denton v. Jackson*, 2 Johns. C. R. 320; *Dana v. Brown*, 1 J. J. Marsh. 304; *Wood v. Bank of Kentucky*, 5 Monr. 194; *Martin v. Dryden*, 1 Gilm. 187; *Broomley v. West Chester Manufacturing Company*, 1 Johns. C. R. 366. Where a suit at law is brought against the husband and wife for the purpose of affecting her interest, she is a necessary party to a bill in chancery by the husband for an injunction to restrain proceedings in the suit at law. *Booth v. Albertson*, 2 Barb. Ch. R. 313. Also in a bill by a husband in the right of his wife, she is a necessary party. *Rings v. Warder*, 6 B. Monr. 514.

In a bill to redeem a mortgage, the personal representative of the mortgagee is a necessary party; *Guthrie v. Sorrell*, 6 Ired. Eq. 13; and all the mortgagees in whom is vested the legal title, are necessary parties to a bill to redeem, filed by the assignee of the equity of redemption. *Woodward v. Wood*, 19 Ala. 213.

Every party interested in land belonging to co-tenants is a necessary party to a bill for partition; *Borah v. Archers*, 7 Dana, 176; *Venable v. Beauchamp*, 3 Id. 321; *Pope v. Malone*, 2 A. K. Marsh. 239; and the remaindermen are necessary parties to a suit for the release of title to land held by a tenant for life. *Stephens v. Terrel*, 3 Monr. 131. See also *Swan v. Ligon*, 1 McC. Ch. 227; *Hunt v. Booth*, 1 Freem. Ch. 215. But a person cannot maintain a bill in his own name, to establish a title to land held jointly with another. *Newman v. Kendall*, 2 A. K. Marsh. 234.

In a suit by a trustee, for any matter concerning the execution of the trust, the *cestui que trust* must be made a party. *Burney v. Spear*, 17 Geo. 223; *Hall v. Harris*, 11 Texas, 300. But a trustee may maintain a bill in equity, to redeem a mortgage made by himself, of the trust estate, without making his *cestui que trust* a party to the bill. *Boyden v. Partridge*, 2 Gray, (Mass.) 190. See also *Marriott v. Givens*, 8 Ala. 694; *Ayers v. Wright*, 8 Ired. Eq. 229; *Woodward v. Wood*, 19 Ala. 213; *General Mutual Insurance Company v. Benson*, 5 Duer, (N. Y.) 168.

Partners in rights to lands, must all join in a suit against adverse claims, or the bill will be dismissed without prejudice. *Hoy v. McMarry*, 1 Litt. 364. A dormant partner need not be joined in a bill in equity to enforce a contract against a person who dealt only with the ostensible partner. *Goble v. Gale*, 7 Blackf. 218.

Humbly complaining sheweth unto your lordship your oratrix A. B. of — in the county of — the wife of D. B. late of the same place who hath abjured the realm, [or who hath by due course of law been sentenced to transportation to parts beyond the sea where he now is] [or who is an alien enemy] That, &c.

5. In a suit by a feme covert whose husband has abjured the realm,<sup>(e)</sup> or who has been transported,<sup>(f)</sup> or is an alien enemy.<sup>(g)</sup>  
6. In a suit on behalf of an infant.<sup>(h)</sup>

Humbly complaining sheweth unto your lordship your oratrix S. N. spinster an infant under the age of twenty-one years (that is to say) of the age of six years and ten months (the daughter and only child of J. N. late of, &c. deceased) by J. M. of, &c. gent. her next friend, That, &c.

*If adults and an infant are plaintiffs, then thus :*

Humbly complaining show unto your lordship your orator and oratrixes G. S. of, &c. esq. and S. his wife and M. S. an infant by your orator G. S. her father and next friend, That, &c.

\*Humbly complaining show unto your lordship your orator A. B. of, &c. and your orator C. D. late of — but now of — against whom a commission of lunacy has been lately issued and is now in force, and under which said commission your orator C. D. was duly found and declared to be a lunatic and your orator appointed committee of his estate, That, &c.

[ \*4 ]  
7. In a suit on behalf of a lunatic.<sup>(i)</sup>

*Or thus :*

Humbly complaining sheweth unto your lordship your orator H. H. of — esq. a lunatic by the Rev. G. I. of — clerk the committee of his estate, That, &c.

Humbly complaining sheweth unto your lordship your oratrix A. B. of, &c. spinster being deaf and dumb by C. D. of, &c. yeoman her next friend, That, &c.

8. In a suit on behalf of a person deaf and dumb.

but none can bring a bill in the name of a feme covert as her *prochein amy* without her consent. See Lord Redesdale's Tr. 27; *Andrews v. Cradock*, Prec. in Ch. 376; *Griffith v. Hood*, 2 Ves. 452.

(e) A wife whose husband is by act of parliament banished for life may in all things act as a feme sole, and as if her husband was dead; the necessity of the case requiring she should have such power. *Countess of Portland v. Prodgers*, 2 Vern. 104; *Wayland's case*, 1 Inst. 133. See also *Sparrow v. Carruthers*, 2 Bl. Rep. 1197; Will. on Pl. p. 4.

(f) See *Newsome v. Boyer*, 3 P. Wms. 37.

(g) See *Durley v. Duchess of Mazarine*, 1 Salk. 116.

(h) The consent of the infant to a bill filed in his name is not necessary; the next friend being liable to the costs of the suit; see Ld. Redesdale's Tr. 26, 28; *Andrews v. Cradock*, Prec. in Ch. 376; Mosel. 47, 86; 2 Eq. Ca. Abr. 238.

(i) A lunatic may be a party to a bill by his committee to set aside acts during his lunacy. *Riddler v. Riddler*, 1 Eq. Ca. Abr. 279; 1 Fonbl. Tr. 56. Idiots as well as lunatics sue by the committees of their estates. See Ld. Redesdale's Tr. p. 28; Bea. El. of Pleas, p. 312; 2 Madd. Ch. Pr. 753, 4.

9. In a suit on behalf of the crown<sup>(k)</sup> or the Queen Consort. Informing sheweth unto your lordship Sir J. S. C. Knt. his Majesty's Attorney [or Solicitor] General on behalf of his Majesty That, &c. [or Attorney General of her Majesty the Queen Consort] That, &c.

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10. In a suit on behalf of a charity, the relators having no particular interest. Informing sheweth unto your lordship Sir James Scarlett Knt. his Majesty's Attorney-General at and by the relation of G. W. clerk rector of the parish of B. in the county of S. and of W. P. and G. E. churchwardens of the same parish for and on behalf of themselves and the rest of the parishioners and inhabitants of the same parish, That, &c.

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11. In a suit on behalf of a charity, the relators a corporation having an interest in the matter in dispute.<sup>(l)</sup> Informing sheweth unto your lordship R. P. A. Esq. his Majesty's Attorney-General by and at the relation of the Mayor and Commonalty and Citizens of the City of London Governors of Christ's Hospital, and humbly complaining show unto your lordship the said Mayor and Commonalty and Citizens Governors of the said Hospital, That, &c.

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[ \*5 ]  
12. In a suit by the Attorney-General on behalf of a lunatic.<sup>(m)</sup> \*Informing sheweth unto your lordship Sir J. S. Knt. his Majesty's Attorney-General on behalf of C. D. of, &c. a lunatic at and by the relation of E. F. of, &c. gent. That, &c.

(k) See Lord Redesdale's Tr. p. 22, 3; 2 Madd. Ch. Pr. 164.

(l) In this case the pleading is styled an information and bill, and is a compound of the forms used for each when separately exhibited. Where a person thus files an information in the name of the Attorney-General he cannot get rid of it without the consent of the Attorney-General, such consent being necessary in all the stages of an information filed in his name; 2 Madd. Ch. Pr. 165.

(m) See Lord Redesdale's Tr. p. 28; 2 Madd. Ch. Pr. 745; *Attorney-General v. Parnter*, Dick. 748.

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\* In this introductory collection of the formal parts of a bill, no illustration is given of what is usually termed the stating part (sometimes styled premises,) of the bill, which is intended to exhibit the plaintiff's case. This part of the bill will, of course, vary with each particular cause of complaint, and the student must consult the bills at length, which constitute the body of the work. But there are certain general principles, which cannot safely be overlooked by the draughtsman, whatever may be the subject-matter of his bill. These principles should properly be mentioned in the introductory portion of the work, inasmuch as they are more or less applicable to each of the subsequent classes of bills. The stating part of the bill, sets forth the real substance of the complaint, and narrates the facts and circumstances, out of which the right to relief is claimed to arise. *Wright v. Dame*, 22 Pick. 55; *Lingan v. Henderson*, 1 Bland. 236; *Estep v. Watkins*, Id. 486; *Oliver v. Palmer*, 11 Gill & J. 426; *Hayward v. Carroll*, 4 Har. & J. 518. All the material facts, of which the plaintiff proposes to offer evidence, must be stated, and, as a general rule, he will not be permitted to offer, or require evidence of any such fact, not so stated. *Story*, Eq. Pl. § 28. The facts, as stated in the bill, constitute the only ground of relief. *Skinner v. Bailey*, 7 Conn. 496; *Parker v. Carter*, 4 Munf. 273; *Cowles v. Buchanan*, 3 Ired. Ch. 374; *Parker v. Carter*, 4 Munf. 273; *Miller v. Furse*, 1 Bailey, Ch. 187; *United States Bank v. Shultz*, 3 Ham. 61; *Pinson v. Williams*, 23 Miss. 64. It is only necessary to state facts, unless law and fact be so blended, as to render it necessary to state both. *Kelly's Heirs v. Maguire*, 15 Ark. 555. A general charge or statement, however, of the matter of fact, is sufficient, and it is not necessary to charge minutely, all the circumstances which may conduce to prove the general charge; for these circumstances are properly matters

BUT NOW SO IT IS may it please your lordship that the said R. H. combining and confederating with divers persons [or—if there are

IV. THE GENERAL CHARGE OF CONFEDERATING

of evidence, which need not be charged in order to let them in as proofs. A plaintiff is not entitled to call for an answer to a statement in a bill, which is introduced by way of recital, and not as positive allegation. *McIntyre v. Trustees of Union College*, 6 Paige, Ch. R. 239. Even though the bill be taken as confessed, there can be no relief, unless it contains the requisite allegations. *Strother v. Lovejoy*, 8 B. Mon. 135. Whatever is necessarily within the knowledge of the plaintiff, should be alleged, positively and with precision, but the claims of the defendant may be stated in general terms. Story, Eq. Pl. § 255. And where facts are charged in the bill to be, or must necessarily be, in the knowledge of the defendant, a precise allegation is not necessary. *Aikin v. Ballard*, Rice, Ch. 13. Equity is less rigorous than law, in demanding the correct use of apt technical language; and misleading, in matter of form, will not prejudice a party, provided the case is made right in matter of substance, and supported by proper evidence. *Tiernan v. Poor*, 1 Gill & J. 216; *Birely v. Staley*, 5 Id. 432. Strictness in matter of substance is, however, as requisite as at law. *Daniels v. Taggart*, 1 Gill & J. 311; see *Surget v. Byers*, 1 Hemp. 715; *Cockrell v. Gurley*, 26 Ala. 405. Still, it is recommended by Mr. Daniell, (Ch. Pr. p. 414,) that where it is intended to express things, for which adequate legal or technical expressions have been adopted, in pleadings at law, such expressions should be used, as they conduce to brevity and clearness. The general principles respecting multifariousness and certainty, which prevail at law, are applicable to pleadings in equity. *Sheppard v. Sheppard*, 6 Conn. 37. Where a bill seeks an account, upon a charge of fraud, it is not enough to state the fraud in general terms, but the particular act of fraud should be pointed out; Story, Eq. Pl. § 251; and the same rule applies to a bill to open a settled account; the specific errors must be pointed out. Id. See also, *Mebane v. Mebane*, 1 Ired. Ch. 376. And if these errors are not specified in the bill, the plaintiff will not be permitted to prove them at the hearing, even though the settlement of the account is expressed to be errors excepted. 1 Dan. Ch. Pr. 424; see *Bull v. Bull*, 2 Root. 476. But it seems, that although a bill to open an account, contains no direct allegation of fraud, yet, if it alleges facts which constitute fraud, direct or constructive, it will be sustained, on proof of such facts. *Farman v. Brooks*, 9 Pick. 212. On a bill for specific performance, fraud in the defendant cannot be shown as the ground of a decree, unless it be substantially averred in the bill. *Crocker v. Higgins*, 7 Conn. 342.

If the facts, appearing in a suit for the execution of a trust, tend to show a covinous purpose in the execution of the trust, such purpose will not be noticed, without a direct averment thereof in the pleadings. *Hudgins v. White*, 2 Ired. Ch. 575. In general, where a bill charges fraud, the fraud must be specifically set out. *Elston v. Blanchard*, 2 Scam. 420; *Lewis v. Lewis*, 9 Mis. 183; *Carter v. Anderson*, 4 Geo. 516; *Miller v. Cotten*, 5 Id. 341; *Witherspoon v. Carmichael*, 6 Ired. Eq. 143; *Fraser v. Hezt*, 2 Strobb. Eq. 250; *Steed v. Baker*, 13 Gratt. 380; *Smell v. Boudinot*, 1 Stockt. (N. J.) 381; *Moore v. Greene*, 19 How. (U. S.) 69. Matter of mere inference and argument, will be expunged, usually, it seems, with costs. *Hood v. Inman*, 4 Johns. Ch. R. 437. The facts must be so alleged, as to put them in issue, or the relief cannot be granted, though the facts be proved. *Harding v. Handy*, 11 Wheat. 103. And although the plaintiff may make out, by proof, a case entitling him to relief, yet he cannot recover upon a bill, the allegations of which are not adapted to the case proved. *Gibson v. Carson*, 3 Ala. 421; see *Knox v. Smith*, 4 How. 298; *White v. Yaw*, 7 Verm. 357; *Kidd v. Manley*, 6 Cush. 156. But a verbal variance, in setting out an instrument, will not be fatal, if the legal effect and operation of the instrument produced, are the same as that of the instrument set forth in the bill. *Sears v. Barnum*, 1 Clark, 139. In a bill for specific performance, a variance, in the language of the contract proved, is not material, if the signification be the same. *McWhorter v. McMahan*, 10 Paige, Ch. R. 386; see also, *Ontario Bank v. Schermerhorn*, Id. 109; and *Baggot v. Eagleson*, 1 Hoff. Ch. R. 110.

If a bill makes an instrument a part thereof, without setting forth the contents, or annexing a copy, it is bad on demurrer. *Martin v. McBryde*, 3 Ired. Ch. 531. The instrument must, in such case, be annexed, or its contents set forth in the bill. *King v. Trice*, Id. 568. The exhibits are not a part of the bill, but are a part of the proof, and cannot aid defective statements in the bill. *Caton v. Willis*, 5 Ired. Eq. 335. Copies of deeds, filed with a bill as exhibits, are made in legal intendment, portions thereof, and should be objected to before the hearing, if at all. *Surget v. Byers*, 1 Hemp. 715. And where the execution of a deed has been admitted, in the answer, and a copy has been filed, as an exhibit, it cannot be objected to for the first time at the trial. *Green v. Campbell*, 2 Jones, Eq. (N. C.) 446.

RACY AGAINST  
THE PERSONS  
COMPLAINED  
OF.<sup>d</sup>

*several defendants, then thus*:—combining and confederating with the said C. H. and M. H. and with divers other persons, *or*—the said R. H. L. M. and N. M. combining and confederating together<sup>(n)</sup> and with divers persons] at present unknown to your orator whose names when discovered your orator prays he may be at liberty to insert herein with apt words to charge them as parties defendants hereto, and contriving how to wrong and injure your orators in the premises he the said R. H. absolutely refuses to comply with such requests, and he at times pretends that, &c.

### *Another Form:*

BUT NOW SO IT IS may it please your lordship that the said R. H. L. M. and N. M. in concert with each other allege that, &c. [*or*, colluding and confederating with each other refuse to comply with such requests, and pretend that, &c.]<sup>e</sup>

(*n*) Where a charity is interested in the fund in question the names of the treasurer and his Majesty's Attorney-General may be introduced thus; 'and also W. W. of, &c. esq. the treasurer of the Female Orphan School, commonly called the Asylum, and joining with Sir J. S. C. Knt. his Majesty's Attorney-General, they the said R. H. L. M. and N. M. absolutely refuse,' &c.

<sup>d</sup> This part of the bill is treated as mere surplusage, and, if inserted, need not be denied or responded to, in the answer. If a combination, or confederacy, is really relied on, as a ground of equitable jurisdiction, it must be specially, and not generally charged. Story, Eq. Pl. §§ 29, 30; 1 Dan. Ch. Pr. 426. Indeed, by the Equity Rules of the Federal Courts, of Pennsylvania, Massachusetts, and perhaps of other States, the insertion of the common confederacy clause, is either left to the option of the pleader, or is wholly prohibited. A general charge of a fraudulent combination, &c., usually inserted in bills, is not sufficient to charge fraud; there must be a specific allegation of fraud, stating the facts. *Lewis v. Lewis*, 9 Mis. 183. The allegation of confederacy is not essential, except where it is intended to charge fraud and combination, specifically. *Stone v. Andrews*, 6 Foster, 506.

<sup>e</sup> The phraseology by which pretences are inserted in a bill, will appear, by reference to the subsequent forms of bills. This part of the bill is introduced wherever the plaintiff is aware at the time of filing the bill, of any defence which may be made to it, and has any matter to allege, which may avoid the effect of the defence. Thus, a defence may be anticipated and replied to in the bill. The charging part may however, often be, and frequently is, omitted, as the stating part should fully unfold the plaintiff's case; but it may often be beneficially used, for the purpose of introducing matter, which would formerly have been the subject of a special replication, and as a foundation for interrogatories, which may lead to a discovery of the defendant's case, and for collateral inquiries, not necessarily arising out of the main case presented by the bill, but which, without some allegation or charge in the pleadings to warrant them, could not be introduced. 1 Daniel, Ch. Pr. 428. A charge in the bill, that the defendant pretends that a certain fact has taken place, puts that fact in issue. *Ib.* It is perjury to swear to a bill, in which the plaintiff knowingly makes a false charge in the charging part, as much as if he makes a false statement in the stating part. *Smith v. Clark*, 4 Paige, 368. A defect in the charging part, cannot be supplied by a subsequent interrogatory. *Mechanics Bank v. Levy*, 3 Paige, Ch. R. 606. If the equity of the plaintiff's case is not unfolded in the stating part of the bill, but appears only in the charging part, and thus consists only in an allegation, that the contrary of such pretences is the truth, the bill will be bad. Story, Eq. Pl. § 32. But it is said, in 2 Hare, R. 264, that a fact, introduced by way of charge in a bill, is as well pleaded as if introduced in the shape of what is technically called a statement, and that there is no rule that every material fact must precede what is termed the charging part of the bill. See the authorities cited in Story, Eq. Pl. § 32 a, and notes, (6th ed.)

All which actings doings pretences and refusals are contrary to equity and good conscience and tend to the manifest wrong and injury of your orators in the premises. IN CONSIDERATION whereof and forasmuch as your orators can only have adequate relief in the premises in a court of equity where matters of this nature are properly cognizable and relievable, TO THE END therefore that the said R. H. and C. H. and their confederates when discovered may upon their several and respective corporal oaths to the best and utmost of their several and respective knowledge remembrance information and belief full true direct and perfect answer make to all and singular the matters aforesaid, and that as fully and particularly as if the same were here repeated and they and every of them distinctly interrogated thereto, and more especially that the said confederates may in manner aforesaid answer and set forth Whether, &c.<sup>5</sup>

VI. THE GENERAL AVERTMENT THAT THE ACTS COMPLAINED OF ARE CONTRARY TO EQUITY, CONCLUDING WITH THE INTRODUCTORY WORDS TO THE INTERROGATING PART.<sup>f</sup>

<sup>f</sup> This is usually termed the *Jurisdiction clause*, but it is not necessary, and will not, of itself, give jurisdiction where it would not otherwise attach; and if the bill is, in other respects, sufficient, it will be sustained. Story, Eq. Pl. § 10, and § 34. The bill itself must state a case within the proper jurisdiction of a Court of Equity. *Chase v. Palmer*, 12 Shep. 341. But where the courts of a State have not a general jurisdiction in equity, it must be made to appear affirmatively on the face of the bill, that the case is within the jurisdiction of the court. *May v. Parker*, 12 Pick. 34.

<sup>5</sup> The ancient precedents of bills contained no special interrogatories, and they are said still to be not absolutely necessary; for if the defendant answers fully, the object of the special interrogatories is accomplished. Story, Eq. Pl. § 38. One of the Equity Rules of the United States Courts, formerly relieved a defendant from answering any statement or charge in the bill, unless particularly interrogated thereto; but by a subsequent rule, adopted January 14th, 1851, the former rule was repealed, and it was declared that it should not be necessary thereafter to interrogate a defendant, specially and particularly, upon any statement in the bill, unless the complainant desired to do so to obtain a discovery. Rule XCIII. In South Carolina, the use of the interrogatory part of bills is discontinued. 1 Dessausure, 150. In Massachusetts, by rule of court, the bill concludes with a general interrogatory. 24 Pick. Rep. 411.

A note or memorandum, at the foot of the bill, should specify the interrogatories which each defendant is required to answer; and this note, by the rules of the United States courts, and the courts of Pennsylvania, is treated as a part of the bill; and the addition of such a note, or any alteration in, or addition to it, after the bill is filed, is considered and treated as an amendment of the bill. In *Shedd v. Garfield*, 5 Vermont, 39, it is said, that a bill which wholly omits the interrogatory part, is defective. But in New York, it has been held, that the general interrogatory, or requisition in a bill, "that the defendant may full answer make, to all and singular the premises, fully and particularly, as though the same were repeated, and he specially interrogated, &c.," entitles the plaintiff to a full disclosure of the subject-matter of the bill, equally as if he had specially interrogated the defendant to every fact stated in the bill. *Methodist Episcopal Church v. Jaques*, 1 Johns. Ch. 65. If there is nothing in the prior part of a bill to warrant a particular interrogatory, the defendant is not bound to answer it. It is when the interrogatories are founded on matter contained in the charging part of the bill, that they become a part of it, though not indispensable to a bill in equity. *Eberly v. Groff*, 9 Harris, 256. And a defendant is not bound to answer interrogatories, asking a disclosure of matters, no way connected with, or material to the case. 1 Wright, 323; *Hagthorp v. Hook*, 1 Gill & Johns. 270. And when a question arises upon the sufficiency of the answer, we are to see whether the allegations in the bill justify the interrogatory, and of course impose the necessity of answering it. Story, Eq. Pl. § 36. But a variety of questions may be founded on a single charge, or the incidental circumstances of a fact alleged. If an answer is made to an interrogatory, which does not properly grow out of the bill, and the answer is replied to, it is thereby put in issue, and the informality is cured. 1 Dan. Ch. Pr. 432; Story, Eq. Pl. §§ 36, 37. The interrogatories are to be construed by the charging part of the bill, and a defective statement of facts cannot be supplied by a subsequent interrogatory. *Mechanics Bank v. Levy*, 3 Paige, Ch. R. 606; *Cowles v. Buchanan*, 3 Ired. Ch. 374; *Parker v. Carter*, 4 Munf. 273.

VIII. THE  
PRAYER FOR  
[ \*6 ]  
GENERAL RE-  
LIEF AT THE  
DISCRETION OF  
THE COURT.  
IX. 1. THE  
PROCESS OF  
SUBPŒNA.<sup>b</sup>

And that your orator may have such further or other relief in the \*premises as the nature of the circumstances of this case may require and to your lordship shall seem meet.

May it please your lordship to grant unto your orator his Majesty's most gracious writ of subpœna to be directed to the said A. B. thereby commanding him at a certain day and under a certain pain therein to be limited personally to be and appear before your lordship in this honorable court, and then and there full true direct and perfect

<sup>b</sup> The prayer for relief will depend upon the facts of each case, and the nature of the relief sought, and should be framed with great care. Unless there be a prayer, there can be no decree for the complainant. *Driver v. Fortner*, 5 Porter, 9. Bills usually contain a special prayer for the particular relief, and also a prayer for general relief. Where special orders and provisional processes are required, founded on particular circumstances, such as writs of injunction, writs of *ne exeat regno*, orders to transfer funds, or to preserve property pending the litigation, they are usually made the subjects of a special prayer. *Story*, Eq. Pl. § 43; *Mitt. Eq. Pl.* 46. If no relief is prayed, against a party who is made defendant, the bill will, as to him, be dismissed. 1 Hayw. 167. Though the plaintiff should mistake the relief to which he is entitled, in his special prayer, the court may yet afford him the relief to which he has a right, under the prayer for general relief, provided it is such relief, as is agreeable to the case made by the bill. *Story*, Eq. Pl. § 40. Under the prayer for general relief, such relief only can be granted, as the case stated in the bill, and sustained by the proof, will justify. *Hobson v. McArthur*, 16 Pet. 182; *Gibson v. McCormick*, 10 Gill & J. 65; *Lingan v. Henderson*, 1 Bland. 236; *James v. Bird*, 8 Leigh, 510; *Danforth v. Smith*, 23 Vt. (8 Washb.) 247; *Brown v. McDonald*, 1 Hill, Ch. 297; *Jones v. Bush*, 4 Harring. 1; *Kelley v. Payne*, 18 Ala. 371; *Stone v. Anderson*, 6 Foster, (N. H.) 506. In the last case, a doubt is expressed whether a complainant, under the general prayer, is entitled to any relief consistent with the case made, though inconsistent with the specific relief prayed for. Although the plaintiff is not confined to the specific relief asked in his bill, yet he cannot obtain relief in opposition to its allegations. *Hilleary v. Hurdle*, 6 Gill, 105.

It seems, that in the case of an infant plaintiff, relief may be given under the prayer for general relief, which is not consistent with the specific relief prayed for. *Kornegay v. Carroway*, 2 Dev. Ch. 403. But the general rule is, that there can be no claim recovered, or relief granted, distinct from, and independent of, the specific relief prayed for, and put in issue by the bill. *Sheppard v. Starke*, 3 Munf. 29; *Thomson v. Smithson*, 7 Porter, 144; *Allen v. Coffman*, 1 Bibb, 469. The prayer for the other relief, should be inserted in the bill in the disjunctive. *Pleasants v. Glasscock*, 1 S. & M. Ch. 17. See, however, *Pensenneau v. Pensenneau*, 22 Mis. (1 Jones,) 27, where it was held, that a bill cannot pray for the execution of a trust, and, in the alternative, a partition, if the facts proved do not warrant the relief first prayed, and that the plaintiff must assume that the facts are one way, and ask the appropriate relief.

Where the case made by the bill, may entitle the plaintiff to one of two kinds of relief sought, but not to both, the prayer should be in the alternative, and such a form of prayer is appropriate, where the plaintiff is in doubt as to the kind of relief to which the facts stated in the bill, entitle him, or the nature of the relief depends upon a particular fact or circumstance, known to the defendant, and of which a discovery is sought by the bill. *Lloyd v. Brewster*, 4 Paige, Ch. R. 537. For instance, a bill asking relief of A., if he had authorized B. to collect money, and of B., if he has collected it without authority, would be good. *Thomason v. Smithson*, 7 Porter, 144; *Strange v. Watson*, 11 Ala. 324. Both of the alternative prayers should be cognizable by the court, and they should not be framed so as to elude a rule of court. *Lingan v. Henderson*, 1 Bland. 236.

A prayer, assigning several reasons for vacating a deed, is considered as so many separate prayers; and if one reason be valid, it is error to reject the whole prayer. *American Exchange Bank v. Inloes*, 7 Md. 380. But a bill, which states the cause of action in the alternative, is insufficient, if one of the alternatives shows that there is no right to recover, as the bill must be construed most strongly against the pleader. *Andrews v. McCoy*, 8 Ala. 920.



answer make to all and singular the premises, *and further to stand to perform and abide such further order, direction and decree(o) therein as to your lordship shall seem meet.* And your orator shall ever pray, &c.

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May it please your lordship to grant unto your orator his Majesty's most gracious writ of subpoena to be directed to the said A. B. &c. [As in the preceding form, No. 1, as far as the word 'premises' and proceed thus:] and that his Majesty's said Attorney-General being attended with a copy of this bill may appear and put in his answer thereto; and that all the said defendants may stand to and abide such order direction and decree in the said premises as to your lordship shall seem meet. And your orator shall ever pray, &c.

2. Prayer of process' when his Majesty's Attorney-General is also a defendant.

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May it please your lordship the premises considered to grant unto your orator your lordship's letter missive to be directed to the said J. Earl of B. thereby requiring him to appear to and answer your orator's said bill of complaint, or in default thereof his Majesty's most gracious writ of subpoena to be directed to the said J. Earl of B. thereby commanding him, &c. [*proceeding as in form No. 1.*]

3. Prayer for a letter missive. (p)

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May it please your lordship to grant unto your orator not only his Majesty's most gracious writ of injunction issuing out of and under the seal of this honorable court to be directed to the said A. B. to restrain him from(q) proceeding at law against your orator \*touching any of the matters in question, but also his Majesty's most gracious writ of subpoena to be directed, &c. [*proceeding as in form, No. 1. p. 6.*]

4. Prayer for an injunction to restrain the defendant from proceeding at law.

[ \*7 ]

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May it please your lordship to grant unto your orator not only his Majesty's most gracious writ of injunction issuing out of and under the seal of this honorable court, to be directed unto the said A. B. to restrain him, his servants, workmen, and agents from committing waste, spoil or destruction in the mansion or other houses upon the estates in question, and from cutting down any timber or

5. Prayer for an injunction to stay waste.

(o) In all bills of *discovery* merely or to *perpetuate the testimony of witnesses*, the words in italics must be omitted. As to the time of issuing the process of subpoena, see the 4th and 5th Ann. c. 16, s. 22.

(p) The right to the letter missive and copy of the bill is the privilege of Peerage not of Parliament; in this respect therefore there is no distinction between English, Scotch, and Irish peers; all being entitled equally to the privilege of Peerage with the exception of those who choose to waive it in order to sit in the House of Commons. An injunction therefore or other process not so accompanied, is good for nothing. *Lord Milsington v. Earl of Portmore*, 1 Ves. & Bea. 419; *Robinson v. Lord Rokeby*, 8 Ves. 601, 2d edit.; 2 Madd. Ch. Pr. 196, 7. See also the 12th and 13 Will. 3, c. 3, s. 1 and 2. 11 Geo. 2, c. 24. 10th Geo. 3, c. 50, s. 6. 39 & 40 Geo. 3, c. 67.

(q) The prayer for the writ of injunction must be conformable to the prayer of the bill.

other trees growing upon the said estates, which are planted or growing there for the protection of the said mansion and other houses belonging to the said estates, or for the ornament of the said house, or which grow in lines, walks, vistas or otherwise for the ornament of the said houses, or of the gardens, parks, or pleasure grounds thereunto belonging, and also to restrain him, his servants, workmen and agents, from cutting down any timber or other trees, except at seasonable times, and in husband-like manner, and likewise from cutting saplings and young trees not fit to be cut, as and for the purposes of timber, but also his Majesty's most gracious writ of subpœna, &c. [*proceeding as in form, No 1. p. 6.*]

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6. Prayer for a writ of ne exeat regno. May it please your lordship the premises considered to grant unto your orator not only his Majesty's most gracious writ of *ne exeat regno* issuing out of and under the seal of this honorable court to restrain the said defendant C. D. from departing out of the jurisdiction of this court, but also his Majesty's most gracious writ of subpœna,<sup>(r)</sup> &c. [*proceeding as in form, No. 1. p. 6.*]

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7. Prayer for a writ of certiorari.- May it please your lordship therefore to grant unto your orator a writ of *certiorari* to be directed to the said Lord Mayor of the City of London and his Brethren the Aldermen of the said city, thereby commanding them upon the receipt of the said writ to certify and remove the record of the said cause and all proceedings thereon into this honorable court,<sup>(s)</sup> and to stand to and abide such order and direction as to your lordship shall seem meet and the circumstances of the case may require. And your orator shall ever pray, &c.

(<sup>r</sup>) Upon an application for the writ of *ne exeat regno* no subpœna is served, although it is always prayed, but upon personal service of the writ the defendant is bound to appear. Having appeared, he must put in his answer, and may then apply to set aside the writ: but his affidavit cannot be received. *Russel v. Ashby*, 5 Ves. 98; and see *Bea. Ne Ex. Reg. p. 67*; 2 *Madd. Ch. Pr. p. 226*.

(<sup>s</sup>) No appearance or answer is required and consequently the writ of subpœna is not prayed; see *Lord Redesdale's Tr. p. 49*; *Harr. Ch. Pr. (Ed. Newl.) 49, 560*; 1 *Madd. Ch. Pr. 12, 182*. The old form of a bill of this sort with the mode of proceeding thereon, is to be found in *West's Cymbol. part ii. p. 258, 286*.

## \*CHAPTER II.

## ORIGINAL BILLS PRAYING RELIEF.

1. BILLS FOR SPECIFIC PERFORMANCE OF AGREEMENTS.<sup>a</sup>

\*I. *Bill by a vendor against a Peer, for the specific performance of a written agreement for the purchase of a freehold estate, the title only being in dispute.*

To, &c. [See form No. 1.]

Humbly complaining sheweth unto your lordship your orator J. C. of, &c. esq. That your orator being seised or well entitled in fee

<sup>a</sup> Mr. Batten, in his "Treatise on the Law relating to the Specific Performance of Contracts," treats of the essential conditions of a contract, which will be specifically enforced in a court of equity, under the following propositions: the contract must be made between competent parties; it must be entered into willingly; the terms must be understood by the parties, and be certain and defined; the consideration must be valuable; there must be mutuality of consideration and remedy; it must be properly proved; the party seeking its performance, must fulfil his obligations under it; it must be such as the court can enforce; it must be one proper to be executed; it must be one on which there is not an adequate remedy at law; it must not be an unreasonable contract, on which there might be relief at law; and the conduct of the party seeking the performance, must have been correct.

Chancery will often refuse to enforce a contract, which it would also refuse to annul, and will leave the parties to their remedy at law. *Jackson v. Ashton*, 11 Pet. 229; *Seymour v. Delancey*, 6 Johns. C. R. 222, and 3 Cow. 445; *Clitherall v. Ogilvie*, 1 Dessau. 250; *Barksdale v. Payne*, Riley, Ch. 174; *Gasque v. Small*, 2 Strobb. Eq. 72; *Henderson v. Hays*, 2 Watts, 148.

Specific performance is not *ex debito justitiæ*, but rests in the sound discretion of the court, under all the circumstances of the particular case; *McNeil v. Magee*, 5 Mason, 244; and it is not decreed where there has been long delay, or *laches*, or a material change of circumstances. *Id.* See also, *Pigg v. Corder*, 12 Leigh, 69. The discretion of the court is not, however, an arbitrary one, but is regulated by rules and principles. *Griffith v. Frederick County Bank*, 6 Gill & J. 424; *Meeker v. Meeker*, 16 Conn. 403; *Seymour v. Delancey*, 3 Cow. 445; S. C. 6 Johns. C. R. 222; *King v. Morford*, Saxton, 274; *Anthony v. Leftwick*, 3 Rand. 238; *Prater v. Miller*, 3 Hawks. 629; *Turner v. Clay*, 3 Bibb, 52; *Frisby v. Ballance*, 4 Scam. 287; *Broadwell v. Broadwell*, 1 Gilm. 599; *McMurtrie v. Bennett*, Harring. Ch. 124; *Dougherty v. Hampston*, 2 Blackf. 273; *McWhorter v. McMahon*, 1 Clark, 400; *Henderson v. Hays*, 2 Watts, 148; *Perkins v. Wright*, 3 Har. & McHen. 324; *Leigh v. Crump*, 1 Ired. Ch. 299; *Gould v. Womack*, 2 Ala. 83; *Hester v. Hooker*, 7 S. & M. 768; *Tobey v. County of Bristol*, 3 Story, 800; *Clement v. Reid*, 9 S. & M. 535; *Tyson v. Watts*, 1 Maryland Ch. Decis. 13; *Roundtree v. McLain*, 1 Hemp. 245; *Lloyd v. Wheatley*, 2 Jones, Eq. 267; *Ash v. Dagg*, 6 Ind. 259.

The contract must be free from fraud or surprise, and fair and just in all its parts, or the plaintiff will be left to his remedy at law. *Seymour v. Delancey*, 3 Cow. 445; *Griffith v. Frederick County Bank*, 6 Gill & J. 424; *Modisett v. Johnson*, 2 Blackf. 431. And performance will not be decreed of an imperfect, inchoate, or hard bargain. *Ohio v. Baum*, 6 Ham. 383. There must also be mutuality and reciprocity of obligation. *McMurtrie v. Bennett*, Harring. Ch. 124; *Hawley v. Sheldon*, Id. 420; *Hutcherson v. McNutt*, 1 Ham. 14; *Cabeen v. Gordon*, 1 Hill, Ch. 51; *Benedict v. Lynch*, 1 Johns. C. R. 370; *Ohio v. Baum*, 6 Ham. 383.

Where a party has failed, without sufficient excuse, to execute his part of the contract, and there has been no acquiescence in the delay, by the other party, the court will not decree specific performance. But if one party has been prevented, by any

simple of or to a certain message or dwelling-house with the appurtenances situate at — and hereinafter described, and being de-

good cause, from performing his part of the agreement, at the stipulated time, and the other party has suffered no material injury by the delay, the court will not refuse its aid. *Longworth v. Taylor*, 1 McLean, 395; *White v. Law*, 7 Verm. 357; *Cleveland v. Benton*, 11 Id. 138; *Goodell v. Field*, 15 Id. 448; *Hatch v. Cobb*, 4 Johns. C. R. 559; *Lewis v. Woods*, 4 How. (Miss.) 86. The complainant must have performed those acts which constituted the consideration of the defendant's promise. *Watts v. Waddle*, 6 Pet. 389; *Greenup v. Strong*, 1 Bibb, 590; *Bearden v. Wood*, 1 A. K. Marsh. 450; *Logan v. McChord*, 2 Id. 224; *Moore v. Skidmore*, 6 Litt. 453; *Clay v. Turner*, 3 Bibb, 52. And he must show that he has not been in fault, but has taken all proper steps towards performance on his own part, and has been ready, desirous, and prompt, to perform. *Rodgers v. Saunders*, 16 Maine, 92; *Brown v. Haines*, 12 Ohio, 1; *Doyle v. Teas*, 4 Scam. 202; *Kendall v. Almy*, 2 Sumner, 278. If one party has been in default, and specific execution would be injurious to the other party, it will not be decreed. *Vail v. Nelson*, 4 Rand. 478. But failure to perform a merely nugatory act, is not material. *Coale v. Barney*, 1 Gill & J. 324. Although great lapse of time will not be a bar, where the complainant has been in no default, and has been reasonably active during the whole time, in asserting his rights and endeavoring to enforce performance; *Coulson v. Walton*, 9 Pet. 62; yet where no effort had been made by a vendee in his life-time, nor by his heirs, after his death, until twenty-nine years had elapsed, and the land had risen in value, and other circumstances had occurred, the lapse of time was held a conclusive bar. *Holt v. Rogers*, 8 Pet. 420. See, on the general subject of the effect of delay, the following cases. *Pratt v. Carroll*, 8 Cranch, 471; *Williams v. Matlocks*, 3 Verm. 189; *Miller v. Bear*, 3 Paige, C. R. 466; *Waters v. Travis*, 9 Johns. Rep. 450; *Jackson v. Edwards*, 22 Wend. 498; *Smedley v. More*, 26 Id. 238; *New Barbadoes Toll Bridge v. Vereeland*, 3 Green, Ch. 157; *Haffner v. Dickson*, 2 Har. & J. 46; *Richardson v. Baker*, 5 Call. 514; *Williams v. Lewis*, 5 Leigh, 686; *McGalliard v. Aikin*, 2 Ired. Ch. 186; *Falls v. Carpenter*, 1 Dev. & Bat. Ch. 237; *Strickland v. Fowler*, Id. 629; *Osborne v. Bremar*, 1 Dessau. 486; *Koen v. White*, Meigs, 358; *Craig v. Leiper*, 2 Yerg. 193; *Bracken v. Martin*, 3 Id. 55; *Childress v. Holland*, 3 Hey. 274; *McMillin v. McMillin*, 7 Monr. 560; *Johnston v. Mitchell*, 1 A. K. Marsh. 225; *Logan v. McChord*, 2 Id. 224; *Eubank v. Hampton*, 1 Dana, 343; *Broadus v. Ward*, 8 Mis. 217; *Scott v. Barker*, 14 Ohio, 547; *Mason v. Wallace*, 3 McLean, 148; *Tiernan v. Roland*, 3 Harris, 429; *De Cordova v. Smith*, 9 Texas, 129; *Smith v. Hampton*, 13 Id. 459.

After an action at law has been commenced for the breach of the contract, the defendant cannot go into equity for specific performance, unless there are some equitable grounds of relief against his breach of it, and entitling him to specific performance. *Long v. Colston*, 1 Hen. & M. 111.

If specific performance would be decreed between the original parties to a contract, it will be decreed between all claiming under them, unless there are intervening and controlling equities. *Hays v. Hall*, 4 Porter, 374.

It is a general rule, that the terms of the contract must be clear, definite, and positive, and its terms must be such that neither party could reasonably misunderstand them; nor should it be vague or uncertain in any of its essential particulars. *Colson v. Thompson*, 2 Wheat. 336; *Carr v. Duval*, 14 Pet. 77; *Prater v. Miller*, 3 Hawks. 628; *Montgomery v. Norris*, 1 How. Mis. 499; *Waters v. Brown*, 7 J. J. Marsh. 123; *Fitzpatrick v. Beatty*, 1 Gilm. 454; *Pigg v. Corden*, 12 Leigh, 69; *Millard v. Ramsdell*, Harring. Ch. R. 373. Where a party has so far performed his part of a contract, that he cannot be put *in statu quo*, he is entitled to specific performance, and it is not necessary to show a literal performance on his part, unless such performance goes to the essence of the contract. *McCarlike v. Brown*, 9 S. & M. 167; *Voorhes v. De Meyer*, 2 Barb. Sup. Ct. Rep. 37; *Shaw v. Livermore*, 2 Green, 338. If the bill show that the contract is within the Statute of Frauds, it may be demurred to; *Chambers v. Lecompte*, 9 Mis. 575; but if the defendant admit the agreement, in his answer, without insisting on the statute, he is presumed to renounce the benefit of the statute. *Small v. Owings*, 1 Md. Ch. Decis. 363; *Hollinshead v. McKenzie*, 8 Geo. 457; *Winn v. Albert*, 2 Md. Ch. Decis. 169; *Albert v. Winn*, 5 Md. 66. Where specific performance has become impossible, as from a subsequent sale of the subject-matter of it, without notice, courts of equity will not decree a specific performance, though the bill may perhaps be retained for awarding compensation in damages. *Woodward v. Harris*, 2 Barb. Sup. Ct. R. 439; *Buttrick v. Holden*, 13 Met. 355.

Although courts of equity will enforce specifically, contracts relating to personalty, in many cases, yet they will weigh with greater nicety contracts of this descrip-

siours of selling such premises and the Right Honorable D. Earl of E. being minded to purchase the same your orator and the said D.

tion, than such as relate to lands. *Mechanics Bank v. Seton*, 1 Pet. 299. And if a breach of a contract relating to personal chattels, may be compensated by damages, equity will not, as a general rule, interfere. *Cowles v. Whitman*, 10 Conn. 121; *Hoy v. Hansborough*, 1 Freem. Ch. 533; *Caldwell v. Myers*, Hardin, 551; *Phillips v. Berger*, 2 Barb. Sup. Ct. R. 608; *Savery v. Spence*, 13 Ala. 561; *Sullivan v. Tuck*, 1 Maryland, Ch. Decis. 59; *Waters v. Howard*, 1b. 112; *Roundtree v. McLain*, 1 Hemp. 245; *The Justices v. Croft*, 18 Geo. 473. Most of the exceptions, appearing in the English cases, are referred to in Fry on Specific Performance, § 29. Performance of contracts respecting slaves, has been frequently enforced. *Williams v. Howard*, 3 Mur. 74; *Thompson v. Wilnot*, 1 Bibb, 422; *Tom v. Desha*, 4 Ham. 373; *Fraser v. McClenaghan*, 2 Rich. Eq. 79; *Graham v. Sam*, 7 B. Mon. 403; *Fraser v. McClenaghan*, 2 Strobb. Eq. 221; *Paslay v. Martin*, 5 Rich. Eq. 351; *Reese v. Holmes*, 1b. 531; *Skrine v. Walker*, 3 Id. 262; *Summers v. Bean*, 13 Gratt. 404. The transfer of stock will sometimes not be decreed. *Ferguson v. Paschall*, 11 Miss. 267. Though a contract for insurance, or for the delivery of a policy of insurance by the company, will be enforced, even after a loss. *Taylor v. Merchants Fire Ins. Co.*, 9 How. (U. S.) 390; see *Carpenter v. Mutual Safety Ins. Co.*, 4 Sandf. Ch. R. 408; *Commercial Mutual Marine Ins. Co. v. Union Mutual Ins. Co.*, 19 How. (U. S.) 318. An agreement to sing at concerts, will not be specifically enforced. *Sanquirico v. Benedetti*, 1 Barb. 315. A contract to build a tavern, at joint risk and expense, was enforced, where one of the parties had performed his part of the contract. *Birchett v. Bolling*, 5 Munf. 462. A copartnership agreement, providing for the conveyance of land and the erection of a factory on it, will not be enforced, unless there has been part performance, in expending the money in the erection of the building. *Tilman v. Cannon*, 3 Humph. 637. Specific performance of a contract, to indemnify against a pecuniary liability, may be enforced. *Chamberlain v. Blue*, 6 Blackf. 491. The fact that damages may be recovered at law, is no reason, of itself, why performance should not be decreed; *Washburn v. Dewey*, 17 Verm. 92; nor is the commencement of a suit at law, of itself, a bar. *Brush v. Vandenberg*, 1 Edw. Ch. 21. Performance may be decreed, in a proper case, where the party has lost his remedy at law. *Rogers v. Saunders*, 16 Maine, 92. But specific performance of a contract will not be decreed, where the law would not allow damages. *Allen v. Beal*, 3 A. K. Marsh. 554; see, however, *Getchell v. Jewett*, 3 Greenl. 350. A husband will not be compelled, specifically, to perform an agreement to procure his wife to join him in a conveyance of real estate. *Clark v. Sevier*, 7 Watts, 107; *Weed v. Terry*, 2 Doug. 344. And where a wife refuses to execute a contract by her husband and herself, to convey her land, he will not be compelled to convey his life estate to the purchaser, and to make compensation for the principal estate. *Clark v. Reins*, 12 Gratt. 98. The specific performance of a mere voluntary agreement, will not be enforced; *Shepherd v. Shepherd*, 1 Maryland, Ch. Decis. 244; *Vasser v. Vasser*, 23 Miss. 378; *Boze v. Davis*, 14 Texas, 331; a voluntary settlement will, however, be enforced, at the instance of a child, against the heir, if the former have the preferable equity; *Haines v. Haines*, 6 Md. 435; and it was held, in *Read v. Long*, 4 Yerg. 68, that a voluntary agreement, if executed, would be aided in equity.

Performance of awards will be enforced, on the ground that such performance is an execution of the agreement of the parties, as fixed by the arbitrators. *McNeil v. Magee*, 5 Mason, 244; *Jones v. Boston Mill Creek Corporation*, 4 Pick. 507; *Cook v. Vick*, 2 How. (Miss.) 882. But enforcement of an award for the payment of money has been refused; *Turpin v. Banton*, Hardin, 312; although where some other specific act is prescribed by the award, its performance will be enforced. *Story v. Norwich and Worcester Railroad*, 24 Conn. 94; See *Kirksey v. Fike*, 27 Ala. 383. Specific performance of an agreement to refer a disputed matter to arbitrators cannot be decreed; *Copper v. Wells*, Saxton, 10; *Tobey v. County of Bristol*, 3 Story, 800; *Conner v. Drake*, 1 Ohio State R. 166; although it has been held that submission by adult heirs, of an equitable claim to land of which their ancestor died seised, may be enforced. *Boyd v. Magruder*, 2 Rob. (Va.) 761.

The plaintiff cannot have a decree for the performance of a contract set up in the answer, different from that charged in the bill, without amending the bill, so as to insist upon such contract; *Byrne v. Romaine*, 2 Edw. Ch. 445; for specific performance, cannot be decreed, unless the agreement, as proved, is clearly charged in the pleadings; *Forsyth v. Clark*, 3 Wend. 637; but a slight variance between the proof and the allegations will not be regarded, especially where the defendants do not pre-

The agree-  
ment for pur-  
chase.

Delivery of  
abstract.

Earl of E. on or about the — day of — entered into and signed a memorandum of agreement(1) respecting the said sale and purchase in the words or to the purport and effect following (that is to say): [*stating the agreement verbatim.*] As by the said memorandum of agreement to which your orator craves leave to refer when produced will appear. And your orator further sheweth that the said D. Earl of E. paid to your orator the sum of £1500 part of the said purchase-money at the time of signing the said agreement and your orator delivered an abstract of his title to the said premises to the said earl's steward or agent; and your orator hath always been ready and willing to perform his part of the said agreement and on being paid the remainder of his said purchase-money with interest to convey the said message to the use of the said D. Earl of E. and his heirs and to let him into possession and receipt of the rents and profits thereof from the time in the said agreement in that behalf mentioned; and your orator hoped that the said D. Earl of E. would have performed the said agreement on his part as in justice and equity he ought to have done. BUT NOW SO IT IS may it please your lordship that the said D. Earl of E.(2) alleges that he is and

(1) If a bill for the specific performance of an agreement states that the agreement was in writing, signature must be presumed until the contrary is shown; *Ris v. Hobson*, 1 Sim. & Stu. on demurrer; and see *Spurrier v. Fitzgerald*, 6 Ves. 543, 4, 2nd edit.

(2) A Peer is never charged with combining with others to deprive the plaintiff of his right, either from respect to the peerage or perhaps from apprehension that such a charge might be construed a breach of privilege. Lord Redesdale's Tr. p. 40. And

tend to disprove the agreement alleged, and submit themselves to any agreement which the plaintiff shall establish; *Zane v. Zane*, 6 Munf. 406; and it has been held, that where some agreement between the parties has been executed, although the allegations in a bill to enforce an agreement, and the proofs, do not correspond, yet the bill will not be dismissed, but the agreement proved will be enforced. *Crow v. Blythe*, 3 Hey. 236. In *Harris v. Knickerbocker*, 5 Wend. 638, it was held, that a bill alleging an agreement to pay the purchase-money in seven years, with interest, was not supported by proof, or an admission, of a contract to pay in seven years, without interest. In *King v. Hamilton*, 4 Pet. 311, an excess of 876 acres of land was decreed to be conveyed to the vendee, according to the contract price. This was at the suit of the vendee. In *Leigh v. Crump*, 1 Ired. Ch. 299, where a contract for the sale of land described it as containing "1000 acres more or less," the court refused to decree a specific performance by the purchaser, upon proof that the land contained but 600 acres, except upon condition that the vendor would make a proportionate deduction in the price. Where the agreement as alleged in the bill, is admitted by the answer, the court may decree performance of it by both parties, without a cross bill being filed. *Dorsey v. Campbell*, 1 Bland. 356. Where the only question on the bill and answer is, whether the vendor can make a good title, the court will direct a reference to a master, to ascertain the title, without the consent of the other party. *Gentry v. Hamilton*, 3 Ired. Ch. 376. The bill, in cases of specific performance, should describe the land with such accuracy as to enable the court to decree a conveyance; *Gray v. Davis*, 3 J. J. Marsh. 381; and all the parties interested in the claim, and those having the legal title to the land, should be before the court. *Rochester v. Anderson*, 6 Litt. 143. The complainant should state in his bill the performance of all conditions precedent on his part; *Bates v. Wheeler*, 1 Scam. 54; but a general allegation that he has "done all that he was bound by the contract to do," is insufficient; the particular facts which he has performed should be stated, in order that the court may determine whether he has done all that he ought. *Davis v. Harrison*, 4 Litt. 261. Where, however, the complainant has partially performed the contract on his part, a formal allegation in the bill, that he is ready to complete the performance, is unnecessary. *Hatcher v. Hatcher*, 1 M'Mullan, Ch. 311. The bill may be shaped so as to obtain specific performance or cancellation of the contract. *Mills v. Metcalf*, 1 A. K. Marsh. 477.

\*always hath been ready and willing to perform the said agreement on his part in case your orator could have made or can make him a good and marketable title to the said messuage and premises.(3) But that your orator is not able to make a good title thereto; whereas your orator charges that he can make a good title to the said messuage and premises. To the end therefore that the said D. Earl of E. may upon his honor(4) true answer make to the matters aforesaid and more particularly that he may answer and set forth in manner aforesaid, Whether, &c. [*Interrogating to the stating and charging parts.*]

And that the said D. Earl of E. may be compelled by the decree of this honorable court specifically to perform the said agreement with your orator, and to pay to your orator the remainder of the said purchase-money with interest for the same from the time the said purchase-money ought to have been paid,(5) your orator being willing and hereby offering specifically to perform the said agreement on his part,(6) and on being paid the said remaining purchase-money and interest to execute a proper conveyance of the said messuage and premises to the said D. Earl of E. and to let him into possession of the rent and profits thereof from the said — day of —. And that your orator may have such further or may have such other relief in the premises as to your lordship shall seem meet and this case may require. May it please, &c. [*Prayer for a letter missive to be directed to the said D. Earl of E. as in form No. 3, p. 6.*]

Defendant alleges that a good title cannot be made.

Prayer for specific performance, and for payment of the remainder of the purchase-money with interest.

the general averment that the acts complained of are contrary to equity is also to be omitted.

(3) After an answer submitting to perform a contract for a purchase of a good title, can be made, and where the *title only* is in dispute, a reference to the master will, on motion, be directed to enquire whether a good title can be made, and whether it appears upon the abstract that a good title could be made. *Wright v. Bond*, 11 Ves. 39; *Jennings v. Hopton*, 1 Madd. R. 211. And see *Morgan v. Shaw*, 2 Mer. 138; *Birch v. Haynes*, *Ibid.* 444. *Withy v. Cottle*, 1 Sim. & Stu. 177.

(4) A Peer puts in his answer upon *honor*; but his answer to interrogatories and on examination as a witness must be upon oath, see 1 P. Wms. 146; 2 Madd. Ch. Pr. 332.

(5) A purchaser is entitled to the profits of the estate from the time fixed upon for completing the contract, whether he does or does not take possession of the estate, and as from that time the money belongs to the vendor, the purchaser will be compelled to pay interest for it if it be not paid at the day, see 6 Ves. 143, 352, and *Sudg. V. & P.* 496, et seq., where the exceptions to this rule are also stated.

(6) The plaintiff in equity, if he has not performed his part of the agreement, must not only show that he was in no default in not having performed it, but must also allege that he is still ready to perform it; see 1 Fonb. Tr. Eq. 391, note (d); *Sudg. V. & P.* 360, 7th edit.

II. *Bill by a vendor for the specific performance of a written agreement for purchase of a freehold estate, entered into with his agent.*(7)

To, &c. [*See form No. 1.*]<sup>b</sup>

Statement of     Humbly complaining sheweth unto your lordship your orator R. O.  
seisin.     \*of, &c. esq. That your orator now is and for some time before the  
[ \*10 ]

(7) Where one person enters into an agreement with another for the benefit of a third person, such third person may come into a court of equity and compel a specific performance. *Hook v. Kennear*, in note, 3 Swanst. 417.

<sup>b</sup> Specific performance will not be decreed, unless the ability of the vendor to make title, as he has agreed to do, is unquestionable. *Garnett v. Macon*, 2 Brock. 185; *Creigh v. Spatts*, 9 W. & S. 82; *Ley v. Huber*, 3 Watts, 367; *Bartlett v. Blanton*, 4 J. J. Marsh. 426; *Jarman v. Davis*, 4 Monr. 115; *Hightower v. Smith*, 5 J. J. Marsh. 542; *Tomlin v. M<sup>c</sup>Chord*, Ib. 135; *Barnett v. Higgins*, 4 Dana, 565. In cases of mutual contract, he who cannot give title to his own land, cannot have a decree for specific performance against the vendee. *Morgan v. Morgan*, 2 Wheat. 290. A purchaser will not be compelled to take a doubtful title, or one which may involve him in litigation. *Butler v. O'Hear*, 1 Dessau. 382; *Watts v. Waddle*, 1 McLean, 200; *Bates v. Delavan*, 5 Paige, C. R. 299, per Walworth, Ch. But a vendee cannot object to the vendor's title, until he restores possession of the land to the vendor. *Gans v. Renshaw*, 2 Barr, 34. It is no objection that the land is subject to a reservation of mines, water power, &c., where there is nothing in or upon the land to which the reservation can apply. *Winne v. Reynolds*, 6 Paige, C. R. 407. The contract will not be enforced where the vendor cannot give such a contract as the purchaser supposed he was contracting for, unless it was understood by them that the risk was assumed by the purchaser. But a trifling variance in the description of, or a trifling incumbrance upon the property, which may be the subject of compensation, will not prevent specific performance. *Winne v. Reynolds*, 6 Paige, C. R. 407. A purchaser who refuses to complete the contract on account of an incumbrance on the premises, should state the objection to the vendor, so as to give him an opportunity to remove it. *McWhorter v. McMahan*, 10 Paige, C. R. 386. But specific performance will generally be decreed if the vendor is able to make a good title at any time before a decree is pronounced, if time is not of the essence of the contract. *Hepburn v. Dunlop*, 1 Wheat. 179; *Dunlop v. Hepburn*, 2 Id. 231; *Hepburn v. Auld*, 5 Cranch, 262; *Brown v. Hoff*, 5 Paige, C. R. 235; *Winne v. Reynolds*, 6 Id. 407; *Wilson v. Tappan*, 6 Ham. 172; *Seymour v. Delancey*, 3 Cow. 445; *Dutch Church v. Mott*, 7 Paige, C. R. 77. The vendor is entitled to specific performance, although he may have a remedy at law by an action for the purchase-money. *Phyfe v. Wardell*, 5 Paige, C. R. 268. Where the payment of the purchase-money and the giving of the deed are to be concurrent acts, the vendor need not tender a deed before payment or tender of the purchase-money, in order to avail himself of the non-payment by the vendee, in defence of a suit for specific performance. *Wells v. Smith*, 7 Paige, C. R. 22. The vendor need not execute and tender a deed to the vendee, in order to entitle himself to specific performance, where he is present at the time and place appointed for delivering it, and the vendee declines and refuses to receive a deed. *Maxwell v. Pittenger*, 2 Green. Ch. 156. And it seems that mere neglect of the vendor to tender a deed, where the vendee is not injured by delay, will not deprive the vendor of his right to specific performance. *Woodson v. Scott*, 1 Dana, 470. Although upon the vendor's bill, specific performance may be refused, yet he is entitled to relief in respect to the rents and profits, under the general prayer for relief, although the bill contains no special prayer that they be paid him. *Watts v. Waddle*, 6 Pet. 389. Where specific performance is decreed, the court, as a general rule, will direct the insertion of the usual covenants of general warranty in the conveyance. *Henry v. Liles*, 2 Ired. Ch. 407; see also, *Gilchrist v. Buie*, 1 Dev. & Bat. Ch. 346; *Myers v. Hite*, 2 A. K. Marsh. 393. Payment of what is due for the land, will be required upon decreeing specific execution of a contract for its conveyance; *Brewer v. Peed*, 7 J. J. Marsh. 230; but the defendant will not be required by the decree to vary the terms of his contract. *Courcier v. Gra-*



year — was seised or entitled in fee-simple of or to the freehold messuages or tenements with the lands and other appurtenances thereto belonging situate in, &c. hereinafter described, and your orator being so seised or entitled and being desirous to sell the same did some time before the — day of — in the year — employ and empower J. K of, &c. gentleman to agree on behalf of your orator with any person or persons at and for such price or prices as he should think fit, and accordingly the said J. K. treated with J. M. of S. in the said county of S. gentleman (the defendant hereinafter named) for the sale of such messuages tenements and hereditaments unto him the said J. M. and at length they came to an agreement for such purchase and thereupon articles of agreement in writing bearing date the — day of — and made between the said J. K. on behalf of your orator of the one part and the said J. M. of the other part were duly executed by the said J. K. and J. M. whereby the said J. K. in consideration of the sum of £—— to be paid as therein and hereinafter mentioned agreed that your orator or his heirs should or would on or before the — day of — then next to the satisfaction of the said J. M. or of his heirs and of his or their counsel make out a good title to the premises hereinafter mentioned and by good and sufficient conveyances surrenders and assurances in the law with reasonable covenants such as the counsel of the said J. M. should advise convey and assure or cause to be conveyed and assured unto the said J. M. and his heirs as he or they should appoint free from all incumbrances (except a perpetual drainage tax charged upon the premises or some part thereof) and particularly a good estate of inheritance of in and to all that messuage, &c. [*describing the premises*] and in consideration thereof the said J. M. did thereby covenant and agree with the said J. K. that he the said J. M. would pay or cause to be paid to your orator his heirs executors or administrators the said sum of £—— immediately upon the executing of such conveyance as aforesaid; and it was thereby mutually agreed that your orator or his heirs should be at the expense of making a good title to the said premises and that the said J. M. should be at the expense of the conveyances and assurances to be made thereof to him as aforesaid and that the said J. M. should have the rents and profits of the said premises from the said — of — provided the purchase of the said premises should be completed on or before that day, but not otherwise. As in and by the said articles of agreement to which your orator craves leave to refer when produced reference being thereto had will more fully appear. And your orator further sheweth unto your lordship that in consequence of the said articles of agreement, and in order to the performance thereof on the part of your orator, who hath been ever

Agreement  
for purchase  
entered into  
with plain-  
tiff's agent.

Delivery of  
abstract.

*ham*, 2 Ham. 325. The purchaser will not be compelled to take only a part of the land for which he bargained, although he has a right to insist that the vendor shall perform the contract so far as he is able, and make compensation in damages for the breach of that part of it which he cannot perform. *Wilson v. Brumfield*, 8 Blackf. 146; *Cunningham v. Sharp*, 11 Humph. 116. Where a part only, of several vendors, had become bound to make a good and sufficient title, it was held that there was a want of mutuality in the contract, and specific execution of it was refused. *Bronson v. Cahill*, 4 McLean, 19.

since willing to perform the same, an abstract of the title to the said estate was on your orator's behalf shortly after the date of the said articles of agreement sent unto the attorney concerned for the said J. M. for his persual, together with all and most of the deeds mentioned in such abstract for the inspection of such attorney or of the counsel of the said J. M. and several objections having been from

[ \*11 ] \*time to time made to your orator's title to the said estate by the counsel or conveyancer before whom such abstract was laid, by or on behalf of the said J. M. all such objections were long since answered or cleared up to the satisfaction of such counsel or conveyancer who long since by writing under his hand or otherwise approved of your said orator's title to the said messuages and premises wherefore the said J. M. ought long since to have paid to your orator the sum of £—— on having a proper conveyance of the said messuages and premises according to the said articles of agreement and upon having possession of the said messuages and premises delivered unto him. And your orator hath at several times since your orator's title to the said messuages and premises was so approved in and by letters and by your orator's agent in a friendly manner applied unto the said J. M. and informed him of your orator's readiness to make and execute a proper conveyance of the said messuages and premises on payment of the said sum of £—— and therefore requested the said J. M. to pay unto your orator the said sum of £—— and your orator well hoped that such his request would have been complied with. BUT NOW SO IT IS may it please your lordship that the said J. M. combining and confederating with divers persons, &c. [*see form IV. p. 5.*] And the said J. M. sometimes pretends that he did not execute any such or the like articles of agreement as aforesaid or that your orator cannot make out a good title to the messuages or tenements lands and hereditaments or not to all the parts thereof, or that your orator hath not made out such title to the satisfaction of him or his counsel or conveyancer. Whereas your orator charges the contrary of all such pretences to be true but nevertheless under such and the like pretences as aforesaid or some other equally unjust the said J. M. refuses to perform the said articles of agreement on his part. All which actings, &c. [*See form VI. p. 5, interrogating to the stating and charging parts.*] And that the said articles of agreement dated the —— day of —— may be specifically performed and carried into execution by the said J. M. your orator hereby offering to perform the same on his part, and that the said J. M. may pay unto your orator the said sum of £—— your orator offering thereon to convey the said messuages tenements lands and hereditaments unto the said J. M. And that your orator may have such further or other relief in the premises as to your lordship shall seem just and proper. May it please, &c. [*See form, No. 1, p. 6.*]

*Pray subpoena against J. M.*

The title approved of by defendant's counsel.

Applications.

Pretence that defendant did not execute the articles of agreement or that plaintiff cannot make out a good title.

Charge the contrary.

Prayer.

\*III. *Bill by a purchaser against vendor for specific performance of a contract for sale of a freehold estate—charging that the purchase-money has remained unproductive in the plaintiff's hands.*(8) —*The estate had been previously put up to sale by public auction and bought in, and the description in the agreement referred to the particulars of sale.*(9)<sup>e</sup>—(*The interrogatories are inserted.*)

To, &c.

Humbly complaining sheweth unto your lordship your orator  
H. A. of, &c. esq. That S. B. &c. esq. being or pretending to  
Statement that defendant was seised in fee.

(8) Notice to the vendor is essential; see *Powell v. Martyr*, 8 Ves. 145; *Winter v. Blades*, 2 Sim. & Stu. 393.

(9) If a bill is filed against several purchasers of different lots at a sale by auction, they may demur for multifariousness, *Brookes v. Lord Whitworth*, 1 Madd. Rep. 88; *Reyner v. Julian*, 2 Dick. 677, stated more fully in note (b), 5 Madd. 144.

<sup>e</sup> Specific performance will not be enforced where the vendor is prevented from performing his agreement by reason of his wife's refusal to join in the deed. *Clark v. Seiver*, 7 Watts, 107; and see *Weed v. Terry*, 2 Doug. 344. Where the vendee has made the first payment according to the contract, and tendered the balance of the purchase-money, and the vendor is in default for not tendering conveyances, the complainant is not bound to bring the money into court. *Johnson v. Stukley*, 2 McLean, 562. The purchaser, to entitle himself to specific performance, must have paid the purchase-money due on the contract, or he must offer by his bill to do so; *Oliver v. Dix*, 1 Dev. & Bat. Ch. 605; *Allison v. Clark*, Breese, 273; and he must follow up the tender by bringing the money into court. *Doyle v. Teas*, 4 Scam. 202. It is not sufficient excuse for not tendering the purchase-money of land by the vendee, that the vendor had conveyed the land to another, when the same became payable. *Doyle v. Teas*, 4 Scam. 202. But where the vendee is prevented by the vendor from paying the price, the latter cannot set up the failure of the former, in order to defeat a specific performance. *Bass v. Gilliland*, 5 Ala. 761. In this case it was held, that the bill of the vendee must allege a tender of the purchase-money when it became due, and a continued readiness to pay it since, and offer to bring the same into court; and that an offer to bring the money into court, as the chancellor may direct, is sufficient to authorize him to entertain and decree upon the bill. Where the complainant is not bound to perform his part of the contract until the complainant has conveyed, he may enforce specific performance. *Mitchell v. Long*, 5 Litt. 71. The assignee of a bond for the conveyance of land, the deed to be executed when the consideration should be paid by the assignor, brought a bill for specific performance, but the bill did not allege payment of the consideration, and it was therefore held to be defective. *Passmore v. Moore*, 1 J. J. Marsh. 591. A bill by the vendee may be maintained against the heirs of the vendor; *Newton v. Swazey*, 8 N. H. 9; *Suydam v. Martin*, Wright, 384; *Jacobs v. Locke*, 2 Ired. Ch. 286; *Glaze v. Drayton*, 1 Dessau. 109; *Trabue v. North*, 2 A. K. Marsh. 361; *Saunders v. Simpson*, 2 Har. & J. 81; all the co-heirs of the deceased vendor should be made parties to the bill, and the death of one of the parties should be proved, to excuse his omission as a party; *Morgan v. Morgan*, 2 Wheat. 290; and a bill may also be sustained against a subsequent purchaser from the vendor, with notice of the prior sale; *New Barbadoes Toll Bridge v. Vreeland*, 3 Green. Ch. 157; but not where the subsequent purchase is *bonâ fide*, and without notice. *Doar v. Gibbes*, 1 Bailey, Ch. 371; *Hines v. Baine*, 1 S. & M. Ch. 530; *Hawthorn v. Bronson*, 16 S. & R. 269. The vendor cannot protect himself, against a bill filed by the vendee, on the ground that he has conveyed away portions of the land, thus rendering specific performance *in toto* impossible, if the vendee consents to receive what remains of the land, though such conveyances were made with the consent of the vendee. *Waters v. Travis*, 9 Johns. R. 450. A vendee may insist upon specific performance by the vendor, so far as the latter can execute the contract. *Jacobs v. Lake*, 2 Ired. Ch. 286; *Henry v. Liles*, Ib. 407; see also, *Weatherford v. James*, 2 Ala. 170; *Bass v. Gilliland*, 5 Id. 761; *Jones v. Shackelford*, 2 Bibb, 410; *McKean v. Read*, 6 Litt. 395. Where the heir of the vendor was a lunatic, his committee was directed to execute

That the estate was put up to sale.

That the estate was bought in.  
Treaty for purchase by private contract.

Agreement entered into.

Payment of deposit.

Possession delivered to plaintiff.

be seised and possessed of or otherwise well entitled unto the freehold messuage or tenement with the out-buildings pleasure ground pasture land and other the appurtenances thereunto adjoining or belonging situate at, &c. and hereinafter mentioned and the inheritance in fee-simple thereof did on or about the — day of — cause all the said estate and hereditaments to be put up to sale by public auction by Mr. W. auctioneer at — in three lots pursuant to printed particulars and conditions of sale previously advertised and published. And your orator further sheweth that the said premises were bought in by the said S. B. at the time of the said sale, and that in about the month of April then next ensuing your orator entered into a treaty with the said S. B. for the absolute purchase of the same estate and premises together with the timber and other trees fixtures and other effects in and about the same discharged from all incumbrances at or for the price or sum of £2900. And your orator further sheweth unto your lordship that the said S. B. agreed to accept the said sum of £2900 as the consideration for the said estate and premises, and thereupon an agreement in writing was entered into and signed by the respective solicitors for and on behalf of your orator and the said S. B. respecting such sale and purchase in the words and figures or to the purport and effect following (that is to say;) [*stating the agreement verbatim.*] As by the said agreement to which your orator craves leave to refer when the same shall be produced will appear. And your orator further sheweth that previously to the signing of the said agreement your orator paid unto the said S. B. the sum of £500 as a deposit and in part of his said purchase-money or sum of £2900; and the said S. B. hath since delivered up possession of the said purchased premises to your orator. And your orator further sheweth unto your lordship that he hath always been ready and willing to perform his part of the said agreement and on having a good and marketable title shown to the said estate and premises and a conveyance of the fee simple thereof discharged of all incumbrances made to him to pay the residue of the said purchase-money or sum of £2900 to the said S. B. And your orator hoped that the said S. B. would have spe-

the necessary conveyances. *Swartwout v. Barr*, 1 Barb. 495. A contract to convey a quantity of any land which the vendor may own, will not be specifically enforced, as specific performance is decreed only where a specific thing is agreed to be conveyed. *Shelton v. Church*, 10 Miss. 774. So a bill for the enforcement of a contract to settle on the complainant "a plantation and permanent home for life," must distinctly set forth what land, where situate, the number of acres, &c. *Mallory v. Mallory*, 1 Busbee, Eq. 80; see also, *Church of the Advent v. Farrow*, 7 Rich. Eq. 378. So if the description of the land is so vague that its location cannot be determined without parol proof, and there is no reference to any other description, a conveyance will not be decreed. *Jordan v. Fay*, 40 Maine, 130. A contract for the sale of land, in which the vendor was to take in part payment a house and lot of the vendee, at its cash value, to be fixed by two persons; and the parties agreed to appoint such persons, but not within any specified time, and never did so, is too incomplete to be enforced in equity. *Baker v. Glass*, 6 Munf. 212. Where, by the agreement, the price of the land was to be ascertained and fixed by the parties, and one of them died before the price had been fixed by them, the contract was held to be too incomplete to be enforced in equity. *Graham v. Call*, 5 Munf. 396. Specific performance of a contract for the conveyance of land, situate in another State, may be decreed, if the defendant is within the jurisdiction of the court. *Sutphen v. Fowler*, 9 Paige, C. R. 280; *Orr v. Irwin*, 2 Car. L. R. 465.

\*cifically performed his part of said agreement as in justice and equity he ought. BUT NOW SO IT IS, &c. (*see form IV. p. 5.*) the said S. B. refuses to perform his part of the said agreement, and to color such refusal he gives out and pretends that he is unable to make out a good and marketable title to the said estate and premises and that he is willing to cancel the said contract or agreement and to repay the said deposit or sum of £500 to your orator. Whereas your orator charges that the said S. B. is able to make out a good and marketable title to the said estate and premises if he thinks proper so to do, but that the said S. B. refuses and declines to make out a good and marketable title to the said premises notwithstanding your orator hath required him so to do and offered to pay him the residue of the purchase-money upon having the title made out and a proper conveyance of the said premises executed to your orator his heirs and assigns by the said S. B. And your orator charges that the whole of the residue of his purchase money of the premises hath been ready and unproductive in his hands for completing the said purchase from the time it ought to have been completed by the terms of the said agreement. All which actings refusals and pretences, &c. &c. [*see form VI. p. 6.*] and more especially that the said S. B. may in manner aforesaid answer and set forth.

Pretence that vendor is unable to make out a marketable title.

Charge the contrary.

And that the residue of the purchase money has remained unproductive.

Whether he was not seised and possessed of or otherwise well entitled unto the said freehold messuage or tenement with the out-buildings pleasure grounds pasture lands and other the appurtenances thereto adjoining or belonging and the inheritance in fee-simple thereof; And whether being so seised and entitled as aforesaid he did not at the time hereinbefore in that behalf mentioned or at some other and what time cause all the said estate and hereditaments to be put up to sale by public auction by the said Mr. W. at — in three lots pursuant to printed particulars and conditions of sale previously advertised and published thereof; And whether the said premises were not bought in by him the said defendant at the time of the said sale or how otherwise; And whether your orator did not in or about the said month of April or when else enter into a treaty with the said defendant for the absolute purchase of the same estate and premises together with the timber and other trees fixtures and other effects in and about the same discharged from all incumbrances at or for the price or sum of £2900 or at some other and what price; And whether the said defendant did not agree to accept the said sum of £2900 as the consideration for the said estate and premises; And whether thereupon such agreement in writing of such date or of or to such purport and effect as hereinbefore in that behalf mentioned was not duly entered into and signed by the respective solicitors for your orator and the said defendant in the name and on the behalf of your orator and the said defendant or how otherwise; And whether your orator did not previously to the signing of the said agreement pay the said defendant the sum of £500 as a deposit and in part of his said purchase-money or sum of £2900; And whether the said defendant hath not since delivered up possession of the said purchased premises to your orator; And whether your orator hath not always been ready \*and willing to perform his part of the said agree-

Interrogatories.

ment, and on having a good and marketable title shown to the said estate and premises and a conveyance of the fee simple thereof discharged of all incumbrances made to him to pay the residue of the said purchase-money or sum of £2900 to the said defendant; And whether the said defendant doth not and why refuse to perform his part of the said agreement; And whether the said defendant is not able to make a good and marketable title to the said estate and premises and if not why not; And whether he doth not and why decline or refuse to make a good and marketable title to the said premises; And whether your orator hath not required him so to do and made such offer to him as in that behalf aforesaid or to that or the like or some and what other purport or effect; And whether the whole of the residue of the purchase-money of the said premises hath not been ready and unproductive in the hands of your orator for completing the said purchase from the time the same ought to have been completed by the terms of the said agreement or from some and what other time. And that the said defendant may be decreed specifically to perform the said agreement entered into with your orator as aforesaid and to make a good and marketable title to the said premises your orator being ready and willing and hereby offering specifically to perform the said agreement on his part, and upon the said defendant's making out a good and marketable title to the aforesaid estate and premises and executing a proper conveyance thereof to your orator pursuant to the terms of the said agreement to pay to the said defendant the residue of the said purchase-money or sum of £2900. And that your orator may have such further and other relief in the premises as to your lordship shall seem meet and the nature of this case may require. May it please, &c. [*See form No. 1, p. 6.*] *Pray subpœna against S. B.*

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IV. *Bill by first vendee against vendor and a subsequent purchaser from him, for the specific performance of an agreement entered into by the vendor with the plaintiff for the sale of a copyhold estate, charging the subsequent purchaser with notice, and praying that he may surrender the estate to the plaintiff, or (in the alternative) if he had no notice, then that the vendor may account for the difference in price. Praying also for an injunction to restrain the defendants from bringing an ejectment.*

To, &c.

Humbly complaining sheweth unto your lordship your orator A. B. of, &c. That J. D. of, &c. one of the defendants hereinafter named was in and before the month of — seised to him and his heirs according to the custom of the manor of E. in the county of — of a messuage, &c. And your orator further sheweth that

[ \*15 ]

\*the said J. D. being desirous to dispose of the said hereditaments entered into an agreement with your orator for the sale thereof to him and which agreement was reduced into writing and signed by

the said defendant J. D. and your orator and is in the words and figures or to the purport and effect following (that is to say): [*stating the agreement verbatim*] As by the said memorandum of agreement when produced will appear. And your orator further sheweth unto your lordship that the said J. D. referred your orator to one V. a laborer who had long lived near the spot as a person who well knew the boundaries of the freehold and copyhold part of the field out of which the said house and premise had been taken and the said J. D. expressed himself to be ready to abide by the opinion of the said V. in that respect. And your orator further sheweth that he accordingly applied to the said V. for his opinion in that behalf and the said V. thereupon informed your orator that the said house and premises agreed to be purchased by your orator and which were in the north-east part of the field were wholly copyhold and that the freehold lay on the south side of the field. And your orator further sheweth unto your lordship that in the said month of — and before the day fixed for completing the said agreement your orator called upon the said J. D. and offered to pay to him the said purchase-money for the said house and premises and then requested the said J. D. to accompany your orator to the steward of the said manor in order to make the surrender of the said premises but the said defendant then pretended that he must make further inquiry with respect to the said premises before he completed the said agreement. And the said J. D. frequently afterwards desired your orator not to be in a hurry about the business and that if your orator waited till the lease was out the said J. D. would let your orator have the field adjoining to the house. And your orator further sheweth that he hath repeatedly applied to the said J. D. and hath requested him specifically to perform his aforesaid contract. And your orator well hoped that the said defendant J. D. would have complied with such your orator's reasonable requests as in justice and equity he ought to have done. BUT NOW SO IT IS may it please your lordship that the said J. D. combining and confederating to and with T. R. C. of, &c. [*see form IV. p. 5,*] absolutely refuses so to do and the said J. D. hath since actually sold the said messuage and premises to the said defendant T. R. C. at an advanced price and hath surrendered the same to the use of the said T. R. C. his heirs and assigns and the said T. R. C. hath been admitted upon such surrender. And the said defendant J. D. sometimes pretends that the said messuage and premises were partly freehold, and that therefore the said defendant was discharged from his said agreement with your orator. Whereas your orator expressly charges the contrary thereof to be the truth. And as further evidence thereof your orator charges that the surrender made by the said J. D. to the said T. R. C. comprises by description and according to the dimensions therein expressed, the whole of the said messuage and premises so agreed to be sold to your orator, and that the same were sold by the said J. D. to the said T. R. C. as wholly copyhold and were no \*otherwise conveyed or assigned to him than by the said surrender. And your orator further charges, that before the said surrender was made by the said J. D. to the use of the said T. R. C. as aforesaid and before the said T. R. C. paid

The agreement for sale.

Plaintiff's application to ascertain the boundaries.

Plaintiff offered to pay the purchase-money.

Applications to vendor for specific performance.

Pretence by vendor that the estate was partly freehold, and that he is discharged from his agreement. Charge that the estate sold to the plaintiff is wholly copyhold.

[ \*16 ]

Charge of notice to the

subsequent  
purchaser.

Evidence in  
support of  
such charge.

Charge that  
the subse-  
quent purcha-  
ser is in some  
way indemni-  
fied.

Prayer.

*Amendment  
upon the com-  
ing in of the  
answer.*

his purchase-money for the same if he has in fact paid such purchase-money the said T. R. C. had some notice or intimation, or some reason to suspect or believe that he the said J. D. had entered into an agreement with your orator for the sale of the said premises to your orator, and in particular your orator charges that the said T. R. C. carries on the business of a brewer, in copartnership with W. and H. and that the said W. and H. were both informed by your orator of his said agreement, and your orator actually delivered the said agreement to the said H. previously to the said surrender to the said T. R. C. or to the payment of his purchase-money, and the said W. and H. or one of them acted as the agent or agents of the said T. R. C. in the treaty with the said J. D. or were in some manner employed or took some part therein on the behalf of the said T. R. C. And the said W. and H. or one of them, gave some information or intimation to the said T. R. C. respecting the agreement made by your orator with the said J. D. And the said W. and H. as the partners of the said T. R. C. have some right or interest in the said premises, although the surrender thereof was made as aforesaid to the said T. R. C. alone. And your orator further charges that the said J. D. hath in some manner indemnified or undertaken to indemnify the said T. R. C. against the claims of your orator in respect of his said agreement, or there is some undertaking between the said J. D. and the said T. R. C. that the said T. R. C. is to be indemnified against such claim. All which actings, &c. [*see form VI. p. 5, interrogating to the stating and charging parts.*] And that the said defendants may answer the premises; and that the said agreement so made between your orator and the said J. D. as aforesaid may be specifically performed, and that the said T. R. C. may be decreed to surrender the said messuage and premises to your orator and his heirs, your orator being ready and willing and hereby offering specifically to perform the said agreement in all things on his part and behalf. [Or if it should appear that the said T. R. C. is a purchaser without notice of the said agreement between your orator and the said J. D. then that the said J. D. may account for and pay to your orator the difference between the price stipulated in the said agreement and the sum at which he sold the same to the said T. R. C.] And that the said defendants may in the mean time be restrained from bringing any action of ejectment against your orator in order to turn him out of possession of the said premises. [*And for further relief, see form VIII. p. 5.*] May it please, &c. [*Pray subpoena and injunction against J. D. and T. R. C. see forms No. 1, and 4, p. 6.*]

J.

N. B. *That part between crotchets is an amendment upon the coming in of the answer, in case it should not be made out in evidence that C. by himself or his agents had notice.*



*\*V. Bill by first vendee against vendor and a subsequent purchaser from him for the specific performance of an agreement entered into by the plaintiff's agent(10) with the vendor, for the purchase of a freehold estate at a sale by auction.—Charging the subsequent purchaser with notice, and also charging the vendor with acts of waste.—Prayer for an injunction against both defendants to restrain waste.*

To, &c.

Humbly complaining sheweth unto your lordship your orator B. R. of, &c. That G. K. of, &c. farmer the defendant hereinafter named was or pretended to be in and before the month of — seised of or well entitled to a freehold estate of inheritance consisting of, &c. and then in the occupation of the said G. K. and that the said G. K. on or about the — day of — caused the said estate and premises to be put up to sale by public auction by a Mr. S. an auctioneer in one lot. And your orator further sheweth that your orator employed one A. B. to attend at the said sale as a bidder on behalf of your orator, and that the said A. B. became and was declared to be the best bidder and purchaser of the said estate at or for the price or sum of £—, and that by the 4th article of the printed conditions of the said sale it was expressed that the purchaser should immediately after the sale pay into the hands of the proprietor's attorney a deposit of £— per cent. in part of the purchase-money, and sign an agreement for payment of the remainder on or before the — of — next and now past. And that by the 5th article of the said conditions of sale it was expressed that a good title should be made to the said premises at the vendor's expense whose attorney would make out the necessary conveyances which were to be approved of by the purchaser's attorney on or before the — day of — last, such purchaser paying towards such conveyances, the sum of £—. And your orator further sheweth that the said A. B. not being prepared to pay the whole of the deposit according to the said conditions of sale, the said G. K. consented to accept the sum of £— in part thereof and to wait for the remainder, and thereupon an agreement was written at the foot of one of the printed particulars, and signed by the said defendant G. K. and the said A. B. in the words and figures or to the purport and effect following (that is to say:) [*stating the agreement verbatim, ratifying the purchase stating the payment of £—, and an agreement to pay the remainder.*] And your orator further sheweth that the said A. B. afterwards on the — day of — signed a memorandum at the foot of the said agreement to the purport or effect following (that is to say) "I the before-mentioned A. B. do hereby acknowledge that I have purchased the before-mentioned estate by the order and for the use of B. R. of —." As in and by, &c. And your orator further sheweth that shortly after-

Sale by auction, and the conditions of sale.

Agreement by vendor to accept a part of the deposit.

(10) See note (7), ante, p. 9.

Tender and payment of the remainder.

\*wards the said A. B. by the direction of your orator tendered or offered to pay to J. F. of — who acted as the attorney of the said G. K. in the said sale the sum of £—— in full for the deposit-money on the said purchase, and the said J. F. thereupon desired the said A. B. to pay the same into Mr. L.'s bank until he procured a proper receipt for it, and the said A. B. accordingly paid the sum of £—— into Mr. L.'s bank on the — day of the said month of — where it has ever since remained. And your orator further sheweth that the abstract of the title to the said premises not having been delivered to your orator or to any person on his part, your orator on the — day of — caused a tender to be made of the said sum of £—— to the said defendant G. K. and also to the said J. F. by Mr. G. who at the same time served each of them with a notice in writing in the words and figures or to the effect following (that is to say:) "Sir, I do," &c. [*tendering the remainder of the deposit-money, and desiring the defendant G. K. to fulfil the contract and cautioning him not to cut timber or commit waste.*] As in and by, &c. And your orator further sheweth that the said Mr. F. the attorney of the said defendant upon being served with the said notice signed an acknowledgment in the words and figures or to the effect following (that is to say:) [*acknowledging the receipt of the deposit-money.*] As in and by the said notice and acknowledgment which or one of which are or is now in the custody or power of the said defendant, when produced will appear. And your orator further sheweth that the said J. F. sent an abstract of the title of the said defendant to the said premises to Mr. E. the solicitor of your orator accompanied with a letter written by Mr. B. the clerk of the said J. F. and bearing date the — day of — which was in the words or to the effect following (that is to say:) [*requesting the abstract and draft conveyance to be returned as soon as possible to complete the business.*] And your orator further sheweth that on the — day of the said month of — the said Mr. E. sent an answer to the said J. F. in the words or to the effect following (that is to say:) [*acknowledging the receipt of last letter, and stating that it should be effected as quick as possible and warning defendant G. K. from committing waste.*] And your orator further sheweth that, &c. [*Bill further states that many queries were made upon the abstract by the counsel before whom the same was laid, occasioned by former inaccuracies and misconceptions relative to the assignments of various outstanding terms affecting the said premises, and that it also appeared by the said abstract that many of the title-deeds of the said premises had not been entered with the register of the Bedford level as by law they were required to be, said premises being adventure land and part of the said level.*] And your orator further sheweth that some

Delivery of abstract.

Objections taken to the title.

Verbal agreement between plaintiff and vendor to enlarge the time for completing the purchase.

[ \*19 ]

time was therefore necessarily consumed in correspondence between the solicitors of your orator and the said G. K. as to these points and that on the — day of — a meeting was had between the said G. K. and your orator and their respective solicitors when it was verbally agreed between your orator and the said G. K. that as there was no hope that the corporation of the Bedford level would obtain an act of parliament to supply the \*defect of registration

which was supposed to exist to a great extent the time for completing your orator's purchase should be enlarged until the — day of — but if the difficulties in the title of the said G. K. should be removed before that time then your orator should sooner complete his purchase and the said G. K. should in the meantime manage the farm according to an agreement to be entered into for that purpose. And your orator further sheweth that in the course of conversation at the said meeting your orator learnt that the aforesaid abstract which had been delivered to your orator's solicitor had not been made out and examined by the said J. F. but had been received by him from Messrs. M. and S. who were solicitors to a Mr. R. to whom the said premises were in mortgage. And your orator further sheweth that after Mr. E. on the part of your orator had prepared the draft of an instrument in writing for carrying into effect the verbal agreement made at the aforesaid meeting the said Mr. E. received a letter written by A. B. the clerk of the said Mr. F. and bearing date the — day of — in the words or to the effect following (that is to say:) "I saw Mr. S." &c., [*stating the defect of the title and writing for a copy of case and opinion to send Mr. S.*] And your orator further sheweth that the said Mr. E. accordingly sent by the return of post a copy of the case and opinion required and on the — day of — the said Mr. E. received another letter from the said A. B. in the words or to the effect following (that is to say:) "K. and R. on the other side, &c." (*to know if plaintiff would accept the title offered, if not they had another purchaser.*) And your orator further sheweth that the copy of Mr. M.'s letter contained in the said last mentioned letter from the said A. B. was in the words or to the effect following (that is to say:) "I am, &c." (*enquiring when the money would be paid, and expressing a determination to proceed in equity and by ejectment if not paid.*) And your orator further sheweth that upon receipt of the said last-mentioned letter the said Mr. E. applied to the said Messrs. M. and S. for permission to compare the abstract of the title with the title-deeds and upon such comparison it appeared that the person who had prepared the abstract had omitted the note of registry to many of the deeds and that there were also several other omissions and misrecitals in the abstract the correction of which removed some of the other doubts that had arisen. And your orator further sheweth that the said Mr. E. caused the said amended abstract to be laid immediately before counsel and although it still appeared that two or three deeds were unregistered and that some difficulty and expense would be occasioned in getting in the outstanding terms and in rectifying the errors that had been made in former assignments of them, yet in order to end the business your orator determined to accept the title as it stood and to take upon himself the expense of getting in the outstanding terms; and thereupon on the — day of — the said Mr. E. by the instruction of your orator wrote a letter to the said J. F. in the words and figures or to the purport and effect following (that is to say): "I am happy," &c. [*stating that plaintiff was ready to complete the purchase as the title stood.*] And your orator further sheweth that on the — day of the same month of — the

Several objections to the title cleared up, upon examining the abstract with the title deeds.

Plaintiff agreed to accept the title.

\*said Mr. E. sent the draft of the proposed conveyance to the said Mr. F. accompanied with a letter in the words and figures or to the purport and effect following (that is to say:) [*stating that he sent the draft of conveyance advised upon by counsel instead of the one drawn by defendant's attorney requesting it to be engrossed immediately and stating that no delay is attributable to plaintiff in the completion of the business.*] And your orator further sheweth that the said Mr. E. not having received any answer to the said last-mentioned letter again wrote to the said Mr. F. in the words or to the effect following (that is to say:) [*expressing plaintiff's anxiety to complete the business.*] And your orator further sheweth that on the — day of — the said Mr. F. received a letter from the said A. B. the clerk of the said Mr. F. in the words or to the effect following (that is to say:) [*stating that defendant would not complete the contract on the ground that the deposit was not paid at the time mentioned in the particulars of sale.*] And your orator further sheweth that he hath since by himself and his agents repeatedly applied to the said G. K. and requested him specifically to perform the agreement so made and entered into by him as aforesaid with the said A. B. the agent of your orator. And your orator hoped the said G. K. would have complied with such your orator's reasonable requests as in justice and equity he ought to have done. BUT NOW SO IT IS, &c. [*see form IV. p. 5.*] And your orator charges that the said G. K. hath since contracted for the sale of the said premises to the said T. P. at an advanced price and hath actually conveyed the said premises or entered into an agreement to convey the same to the said T. P. or to some other person or persons by his order or to his use or in trust for him. And your orator charges that the said T. P. at the time he entered into the said contract for the purchase of the said premises or at the time of the conveyance thereof to him if the same have been conveyed to him or at the time of the payment of the purchase-money for the same if he hath actually paid such purchase-money well knew or had been informed or had received some intimation or had some reason to believe or suspect that the said G. K. had entered into such agreement as aforesaid with the said A. B. or into some agreement with your orator or with some person on his behalf for the sale of the said premises to your orator. And the said T. P. or the agent employed by him in the said purchase or contract had at some or one of the times aforesaid some knowledge or intimation of the several circumstances aforesaid respecting the said premises which had passed between your orator and the said G. K. or their solicitors. And your orator charges that the said J. F. was in fact the agent employed in the contract or sale by the said G. K. to the said T. P. as well on the part of the said G. K. as of the said T. P. And your orator further charges that if in fact the said T. P. has paid the purchase-money for the said premises or any part thereof to the said G. K. the said T. P. has had or taken some indemnity from the said G. K. or some other person in respect of such payment or of such purchase. And your orator further charges that after your orator by the said A. B. had entered into such agreement with the said G. K. as aforesaid and after the hay season of

Defendant refuses to complete.

Applications.

Charges that vendor has sold and conveyed the estate to his co-defendant, who or whose agents had notice of the plaintiff's contract.

Charge that the solicitor was agent to both defendants.

That vendor has given his co-defendant an indemnity. That vendor sold the hay on the farm

\*this year your orator verbally agreed with the said G. K. that the hay on the farm should be left by the said G. K. and taken by your orator at an appraisement but the said G. K. hath nevertheless sold and removed the said hay from the farm to the great injury thereof and the said G. K. hath since his said agreement with the said A. B. ploughed up more than sixty acres of land which according to the usual course of husbandry ought to have been laid down with grass. And the said G. K. hath also since cut down many timber and other trees upon the said premises and hath committed and done other waste and injury thereto. And the said G. K. and also the said T. P. threaten and intend to cut down other trees on and from the said premises and to commit other waste and injury thereto. All which actings, &c. [see form VI. p. 5, *interrogating to the stating and charging parts.*] And that the said defendants may answer the premises. And that the said defendant G. K. may specifically perform the said agreement so made and entered into by him as aforesaid with the said A. B. as the agent of your orator, your orator being ready and willing and hereby offering specifically to perform the said agreement in all things on his part and behalf. And that the said G. K. may be decreed to make compensation to your orator for the waste and other damage done by him to the said premises since the making of the said agreement. And that in the mean time the said defendants G. K. and T. P. may be restrained by the order and injunction of this honorable court from cutting down any timber or other trees upon the said premises or from committing any other waste thereon. [And for further relief, see form VIII. p. 5.] May it please, &c. [Pray subpoena and injunction against G. K. and T. P. See forms No. 1, and 5, p. 6 and 7.]

contrary to his agreement with the plaintiff;

and committed acts of waste.

Prayer.

J. L.

VI. *Bill to compel the execution of a lease by the defendant, whose agent had entered into an agreement to grant a lease to the plaintiff, the widow of a former lessee, and her co-plaintiff as her surety (the old lease having been granted by the father of the defendant.) The agreement constituted by letters between the parties, and confirmed by the defendant.*(11)

To, &c.<sup>d</sup>

Humbly complaining show unto your lordship your oratrix and orator M. G. of, &c. widow and I. J. of, &c. That I. G. the late

J. G. formerly tenant under a lease granted by defendant's father.

(11) See *Wills v. Stradling*, 3 Ves. 378; *Huddleston v. Briscoe*, 11 Ves. 591; *Holland v. Eyre*, 2 Sim. & Stu. 194. An agent contracting for the sale or demise of lands, need not under sect. 2 of the statute of frauds, 29 Car. 2, be authorized in writing. *Clinan v. Cooke*, 1 Sch. & Lef. 31.

<sup>d</sup> An agreement in a lease, that improvements by the lessee should remain after the expiration of the term, and become the property of the lessor, on making compensation, will be enforced. *Berry v. Van Winkle*, 1 Green, Ch. 269. So a provision in a lease, that the lessee may purchase the land on certain terms, may be enforced in favor of the lessee, though there is no corresponding obligation on his part. *Matter of Hunter*, 1 Edw. Ch. 1. Where one contracts for a lease upon certain stipulations, and enters on the land but fails to perform the stipulations, he cannot compel the making of the lease to him. *Jones v. Roberts*, 6 Call, 187; *Harvie v. Banks*, 1 Rand. 408.

husband of your oratrix was for many years the occupier of a farm and lands at B. aforesaid which he held by lease under P. B. of, &c. at the yearly rent of £—— for a term of years which expired on, &c., and that the said I. G. did some time previously to the expiration of the said lease make application for a renewal thereof for a further term of fourteen years to I. H. the agent of P. B. of, &c. the defendant hereinafter named who was the son of the lessor of the said premises and was seised of or otherwise well entitled to the reversion therein. And your orator further sheweth that the said I. H. thereupon demanded the yearly rent of £—— for the same farm and lands for such new lease. And the said I. G. having objected to such increased rent it was agreed between the said I. H. and the said I. G. that P. R. who was named by the said I. G. should meet the said I. H. and that they should together settle the new rent upon a view and valuation of the said farm, and the said P. R. and the said I. H. did accordingly meet and settle the said rent for such further term of fourteen years at £—— per annum. And your orator further sheweth that before any further steps were taken as to the said new lease and on or about, &c. the said I. G. departed this life and thereupon your orator (who is the brother of your oratrix) and I. G. a son of the said I. G. deceased, went together on, &c. to the said I. H. and informed him that your oratrix was desirous to have the new lease of the said farm which had been promised to her said late husband. And it was then agreed between your orator on the part of your oratrix, and the said I. H. on the part of the said P. B. that your oratrix should have a lease of the said farm and lands for fourteen years from the expiration of the old lease at the yearly rent of £—— for the first seven years and at the yearly rent of £—— for the remainder of the term and that for the security of the said P. B. your orator should be named as a joint lessee with your oratrix in the said lease and should execute the counterpart thereof. And your oratrix and orator further show that the abatement of £—— a year in the rent for the first seven years was proposed by the said I. H. himself in consideration of your oratrix's situation, and the said I. H. as soon as the agreement was concluded made a note in writing thereof and signed the same in the form of a letter to Mr. S. the attorney of the said P. B. and as instructions for him to prepare a lease accordingly and delivered the said letter to your orator who carried it to the said Mr. S. And your oratrix and orator further show that your oratrix has in pursuance of the said agreement paid to the said I. H. the yearly rent of £—— for the said land and premises from the said —— day of —— and your oratrix upon the faith of the said agreement with the full knowledge and approbation of the said I. H. and of the said P. B. hath laid out a very considerable sum of money in the improvement of the said farm and lands and the buildings thereon. And your orator and oratrix hoped that the said P. B. would have granted your orator and oratrix a lease of the said farm and lands as in justice and equity he ought. BUT NOW SO IT IS, &c. [see form IV. p. 5.] Pretends that no such agreement as aforesaid was ever made or entered into. Whereas your oratrix and orator charge that the said P. B. well

[ \*22 ]

Application  
for a renewal.Treaty between the  
agents of I. G.  
and the defendant.

Death of I. G.

His widow  
treats for a  
new lease.  
Agreement for  
same.Her co-plaintiff  
agrees to  
be a joint lessee  
as surety  
for her.Instructions  
given for  
lease.Widow continued to pay  
the rent  
agreed upon,  
and laid out  
large sums in  
improvements.Pretence that  
no agreement  
was entered  
into.

knew of such agreement at or immediately after the making thereof and hath repeatedly admitted the same. And in particular did in the month of — acknowledge such agreement in the presence of G. I. another brother of your oratrix and T. P. and promised the \*said G. I. that he would take care that your oratrix should have the lease accordingly. And the said P. B. at other times pretends that such agreement was not reduced into writing nor signed by any person lawfully authorized on his part. *Charge* that the said I. H. was an agent duly authorized to that effect by the said defendant and that such agreement was reduced into writing and signed as aforesaid by the said I. H. not only in the letter hereinbefore stated to have been written by the said I. H. to the said Mr. S. but also in other letters written by the said I. H. to the said P. B. *Charge* that by reason of the circumstances hereinbefore stated the said defendant would be bound in equity to perform the said agreement on his part even if the same had not been reduced into writing and signed in manner hereinbefore-mentioned. All which actings, &c. [*see form VI. p. 5, interrogating to the stating and charging parts.*] And that the said defendant may answer the premises and that the said defendant may be decreed to grant to your orator and oratrix a lease of the said farm and lands pursuant to the aforesaid agreement your orator and oratrix being ready and willing and hereby offering to execute a counterpart of such lease. [*And for further relief, see form VIII. p. 5.*] May it please, &c. [*Pray subpoena against P. B. See form No. 1, p. 6.*]

Charge that defendant knew of the agreement and admitted the same.

[ \*23 ]

Pretence that the agreement was not in writing, and was not signed by an agent duly authorized.

Charge the contrary, and that the agreement appears by letters written.

Prayer.

J. L.

VII. *Bill by lessee against lessor for specific performance of a written agreement for a lease of a house.*

To, &c.

Humbly complaining sheweth unto your lordship your orator A. B. of, &c. That C. D. of, &c. (the defendant hereinafter named) being or pretending to be seised or possessed of a messuage or tenement situate, &c. and being willing and desirous to let the same he in the month of — proposed and agreed to grant unto your orator a lease of the aforesaid premises with the appurtenances and thereupon your orator and the said C. D. duly executed or subscribed a certain memorandum or agreement bearing date, &c. [*stating the agreement.*] As in and by, &c. And your orator further sheweth that in expectation and full confidence that a lease would have been made and executed to him of the said messuage or tenement and premises pursuant to the terms of the said agreement, your orator hath laid out sundry sums in repair of the said premises to a considerable amount. And your orator further sheweth that your orator hath been always ready to perform his part of the said agreement and to accept a lease of the said premises pursuant to the terms thereof. And your orator for that purpose caused a draft of a lease to be drawn pursuant to the terms of the aforesaid agreement and tendered the same to the said defendant for his perusal and appro-

Agreement for lease.

Plaintiff laid out sums of money in repairs.

Refusal by defendant to perform the agreement.

[ \*24 ]  
Applications.      bation but he refused to accept or peruse the same. And your orator  
\*further showeth that he hath frequently by himself and his agents  
applied to the said C. D. and in a friendly manner requested him to  
make and execute unto your orator a lease of the said messuage or  
tenement and premises conformably to the said agreement. And  
your orator well hoped, &c. BUT NOW SO IT IS, &c. [see form IV.  
p. 5.] Defendant pretends that no such agreement as aforesaid was  
ever made or entered into by or between the said defendant and your  
orator or any agreement or that he consented to grant a lease to your  
orator of the aforesaid messuage or tenement and premises. Whereas  
your orator charges the contrary of such pretences to be the truth.  
And so the said confederate will at other times admit, but then he  
pretends that he hath been always ready and willing to make and  
execute a lease of the said messuage or tenement and premises pur-  
suant to the terms of the said agreement and in all respects to per-  
form the same on his part. Whereas your orator charges the con-  
trary thereof to be the truth. But nevertheless the said defendant  
refuses to comply with your orator's aforesaid requests or to perform  
or fulfil the aforesaid agreement. All which actings, &c. [see form  
VI. p. 5, *interrogating to the stating and charging parts.*] And that  
the said agreement may be especially performed and carried into exe-  
cution and that the said defendant may be decreed to execute a lease of  
the aforesaid messuage or tenement and premises to your orator ac-  
cording to the terms of the aforesaid agreement. Your orator hereby  
offering to execute a counterpart thereof and in all other respects to  
perform his part of the said agreement. [And for further relief,  
see form VIII. p. 7.] May it please, &c. [Pray subpoena against  
C. D. See form No. 1, p. 6.]

Pretence that defendant never agreed to grant a lease.  
Charge the contrary.  
Pretence that he is willing to execute a lease pursuant to the terms of the agree-ment.  
Prayer.

J. L.

VIII. *Bill by lessee against lessor, for specific performance of a verbal agreement for a lease of a farm made with lessor's agent, the plaintiff having occupied the farm under an old lease granted by a former owner—praying also for an injunction to restrain the defendant from proceeding in an action of ejectment.* (12)

To, &amp;c.

Defendant entitled to the reversion of the estate in plaintiff's occupation.

[ \*25 ]  
Treaty for a new lease with

Humbly complaining showeth unto your lordship your orator J. M. of, &c. That J. C. of, &c. the defendant hereinafter named was in and before the month of — seised of or otherwise well entitled to the reversion of a farm and lands called or known by the name of, &c. situate, &c. which your orator had occupied from the year — at the annual rent of £ — under and by virtue of a lease thereof from the Rev. E. S. which would expire at —. And your orator further showeth that being desirous to obtain a new lease of \* his said farm and lands your orator on or about, &c. entered into a treaty for such new lease with a Mr. D. the agent or steward of the said defendant J. C. and who was duly authorized by the said

(12) See *Wills v. Stradling*, 3 Ves. 378; *Morphett v. Jones*, 1 Swanst. 172.



defendant for that purpose. And your orator further showeth that the said Mr. D. asked an increased rent of £—— for the said farm and lands from the expiration of the subsisting lease which your orator expressed himself to be willing to give upon a lease for fourteen years, and the said Mr. D. then told your orator that the said defendant would object to granting leases but that he the said Mr. D. should see the defendant in the course of that day, and would let your orator know, and the said Mr. D. accordingly in the evening of that day informed your orator that he had seen the said defendant and that the said defendant was willing to grant to your orator a new lease for seven years at the said proposed advance of £—— a year, and your orator then agreed with the said Mr. D. to accept the said new lease upon such terms. And your orator further showeth that on or about, &c. your orator was at the office of the said Mr. D. upon other business and the said Mr. D. then informed your orator that the said defendant had found fault with the bad state of husbandry of a part of the said lands called, &c. and that he thought your orator had better have his lease executed as Mr. C. who had agreed for a lease of other lands at the same time with your orator was going to have his, and the said Mr. D. then asked your orator if he would have the lease made in his own name or in the name of himself and his brother, to which your orator answered that he would have it in his own name. And your orator further showeth that the said Mr. D. then gave directions to his clerk to prepare two double leases one for your orator and the other for the said Mr. C. but no such lease has in fact ever been delivered to your orator. And your orator further showeth that on, &c. your orator paid to the said Mr. D. on account of the defendant the sum of £—— for the half year's advanced rent which became due under the aforesaid agreement at ——— and your orator hath ever since paid the said increased rent in performance of the said agreement. And your orator in the confidence that the said defendant would duly grant to him a lease of the said farm and lands for the said term of seven years pursuant to the terms of the said agreement hath laid out a considerable sum of money in completing an inclosure and in quickening about thirty-five acres of land part of the said farm in, &c. and in new fencing and quickening other parts of the said farm and in stone-draining other parts thereof and in building a wain-house thereto. And your orator further showeth that he was proceeding to make other improvements upon the said farm and lands but that on or about ——— last your orator was served with a notice from the said defendant to quit the said farm and lands at ——— following. And your orator further showeth that he hath by himself and his agents repeatedly applied to the said defendant to grant to him a lease of the said farm and lands pursuant to the agreement aforesaid. And your orator well hoped, &c. [see p. 24.] And the said defendant in or as of Easter Term served your orator with a declaration in ejectment and the said defendant \*threatens and intends to proceed in the said action of ejectment in order to turn your orator out of the possession of the said premises unless he be restrained therefrom by the order and injunction of this honorable court. All which actings, &c. [see form

defendant's  
agent.

Part perform-  
ance by the  
plaintiff.

Applications.

Defendant has  
brought an  
action of  
ejectment.

[ \*26 ]

VI. p. 5, *interrogating to the stating and charging parts.*—*Prayer for a specific performance, see p. 24; and for an injunction to restrain defendant from proceeding by ejectment, see p. 16.]*

IX. *Bill for the specific performance of a written agreement for the purchase of leasehold premises, made by defendant with the plaintiff's agent; defendant alleging, that the original lease is lost, plaintiff offers to grant him an under-lease.*(13)

To, &c.

Original lease.	Humbly complaining sheweth unto your lordship your orator E. T. of, &c. That by indenture bearing date, &c. and made between E. H. of, &c. of the one part and your orator of the other part the said E. H. for and in consideration, &c. [ <i>stating the lease granted to the plaintiff.</i> ] And your orator further sheweth that on or about, &c.
Agreement for purchase.	your orator entered into an agreement with I. C. of, &c. the defendant hereinafter named which was reduced into writing and signed by the said I. C. and by one H. D. for and on the behalf of your orator and who was duly authorized by your orator for that purpose and is in the words and figures or to the purport and effect following (that is to say:) [ <i>agreement for a sale of the premises for the remainder of the term granted in consideration of a premium.</i> ] As in and by, &c. And your orator further sheweth that it being understood and agreed between the said H. D. on the part of your orator and the said I. C. that he the said I. C. should have immediate possession of the said messuage lands and premises the said H. D. did accordingly upon the signing of the said agreement deliver unto the said I. C. the keys belonging to the said premises and the said I. C. or some person on his part and behalf hath ever since been in possession of the said premises. And your orator further sheweth that your orator hath repeatedly applied to the said I. C. and hath requested him specifically to perform the said agreement on his part and behalf. And your orator well hoped that the said defendant would have complied with such your orator's reasonable requests as in justice and equity he ought to have done. BUT NOW SO IT
Possession given to the defendant.	*IS, &c. [ <i>see form IV. p. 5.</i> ] And to color such his refusal the said
Applications.	I. C. pretends that by reason that the original lease has been lost or mislaid that therefore your orator cannot make a good title to the said messuage lands and premises for the residue of the said term. Whereas your orator charges that the said E. H. upon being informed
[ *27 ]	
Pretence that the original lease is lost.	

(13) See *Holland v. Eyre*, 2 Sim. & Stu. 195, 6; *Heaphy v. Hill*, ib. 29, in which case the bill by the lessee for a specific performance was dismissed, not having been filed for more than two years after the treaty had been broken off, and the defendant had refused to perform the contract. As a general rule the vendor of a leasehold interest is, in cases where the agreement is silent, bound to produce the title of his lessor; *Fildes v. Hooker*, 2 Mer. 424; *Purvis v. Hayer*, 2 Price, 488; but this rule does not extend to cases where the estate is held under a bishop's lease. *Fane v. Spencer*, in note (a), 2 Mer. 430.

thereof executed the counterpart of the same lease and delivered the same to your orator and is ready to confirm the said lease in any other manner that can reasonably be required. And your orator further charges that your orator hath caused an under-lease of the said premises to be prepared according to the agreement so made and signed as aforesaid by the said defendant and hath caused the same to be tendered to the said defendant, and the said defendant hath been requested by or on the part of your orator to accept the said underlease and to execute a counterpart thereof, but the said defendant refuses so to do and insists that he is entitled to an assignment of the original lease. And your orator further charges that the said defendant is to be considered as in possession of the said premises from the date of the said agreement and ought from thence to pay all rent and charges in respect of the said premises and ought also to pay to your orator interest in the said premium of £——. All which actings, &c. [see form VI. p. 5, *interrogating to the stating and charging parts*.—*Prayer for a specific performance*—*praying also that defendant may be charged with the rent and taxes of the premises since the date of the agreement, and may pay to the plaintiff interest on the premium from that date; and for further relief; see forms VIII. and IX. p. 6, and 7.*]

Charge that the original lessor has executed the counterpart.

That an under-lease has been tendered to the defendant.

That he ought to pay the arrears of rent, &c., and also interest on the premium.

J. L.

*X. Prayer to a bill for specific performance of an agreement, on the faith of which plaintiff had taken possession, had paid off part of a sum due on a mortgage, and laid out considerable sums in repairs and alterations; there being a previous settlement, of which plaintiff had no notice;*

*Prayer for a specific performance, if a good title can be made; and if not, then for an account and payment of the moneys advanced by plaintiff and expended in repairs—and in default of payment, then that defendants may be decreed to assign the mortgage security to plaintiff for securing the amount so to be ascertained.*

*The following is the outline of the plaintiff's case:*

T. H. by articles of agreement, agreed to convey a messuage and hereditaments to plaintiff in fee for £——; which messuage had previously, together with other lands, been conveyed to the use of J. A. his executors, &c. for a term of years, for securing £—— and interest; and subject thereto, to the appointment of the said T. H. and in default of appointment to the use of the said T. H. in fee; in the mortgage deed was contained a covenant that T. H. \*and his wife should levy a fine to the uses thereof; which fine was levied accordingly. Plaintiff was let into possession in pursuance of the agreement, and laid out considerable sums in repairs; he also paid off part of the mortgage money due to J. A. and the said T. H. paid the remainder. Previously to the mortgage to J. A. the same hereditaments had been conveyed to E. H. and J. H. in trust for the said

[ \*28 ]

T. H. and M. his wife for their lives, with remainder to their children as tenants in common; of this settlement the plaintiff had no notice.

That the said agreement bearing date, &c. entered into by the said T. H. with your orator as aforesaid may be performed if the said T. H. can make a good title to the said messuage and premises, your orator being willing to perform the same on his part and that in such case the said T. H. may be decreed to make and execute and procure to be made and executed proper conveyances of the said messuage and premises to your orator free from incumbrances pursuant to his said agreement. And in case the said T. H. shall not be able to make a good title to the said messuage and premises then that an account may be taken of what is due to your orator for the aforesaid sum of £—— so paid by your orator to the said J. A. as aforesaid and interest for the same and of all sums of money paid laid out and expended by your orator in repairing and altering the said messuage and premises and making the same suitable and convenient for your orator's business as aforesaid, and that the said T. H. may be decreed to pay to your orator what shall appear to be due to him on the taking of the said accounts. And in case it shall appear that the said T. H. is unable to pay the said sum of £—— so paid by your orator to the said J. A. as aforesaid and interest thereon, then that the said T. H. and the said J. A. and all proper parties may be decreed to assign to your orator the said mortgage bearing date, &c. so made by the said T. H. to the said J. A. as aforesaid of all the said hereditaments therein comprised, and then that the said T. H. and M. his wife and the said E. H. and J. H. may be decreed to pay to your orator what shall appear to be due for principal and interest together with your orator's costs of this suit by a time to be appointed by this honorable court for that purpose, and in default of the said defendant's paying unto your orator such principal interest and costs as aforesaid, then that the said T. H. and M. his wife may be barred from all equity of redemption in the hereditaments and premises comprised in the said mortgage or any part thereof. [*And for further relief.*]

J. M.

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[ \*29 ]    \*XI. *Prayer of a bill by a surety to compel a specific performance of an agreement to execute a mortgage to indemnify the plaintiff from all liability; praying also for a writ of Ne exeat Regno.*

And that the said A. R. may be decreed specifically to perform the said agreement and to make a mortgage to your orator of the said estate and premises to indemnify him against the obligation he has entered into in the Admiralty Court as hereinbefore mentioned. And that it may be referred to the Master to settle such conveyance if the parties should differ about the same. And that the said

A. R. may be restrained from going out of the jurisdiction of this honorable court into parts beyond the seas or into Scotland and that for that purpose a writ *Ne exeat regno* under the great seal of Great Britain may be issued to restrain the said A. R. from going into parts beyond the seas or into Scotland. [*And for general relief.*]

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2. BILLS TO CANCEL AGREEMENTS, BILLS OF EXCHANGE, BONDS AND OTHER INSTRUMENTS.<sup>o</sup>

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\*XII. *Bill by the acceptor against the assignees of the drawers bankrupts, the indorser and holder, to restrain proceedings at law upon an accommodation bill of exchange, and to have the same delivered up to be cancelled.*(1)

In the Exchequer.

To the Right Honorable Frederick John Robinson Chancellor and Under-treasurer of his Majesty's Court of Exchequer at Westminster, to the Right Honorable Sir Richard Richards Knight, Lord Chief Baron of the same court, and the rest of the Barons there.

Humbly complaining sheweth unto your honors your orator H. B. of, &c. merchant, debtor, &c. [*see form 2, p. 2.*] That your orator

(1) See *Jervis v. White*, 7 Ves. 413, 4, 2d edit.; 2 Madd. Ch. Pr. p. 154, 227, 8.

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<sup>o</sup> It may be laid down as a general rule, that where any description of writing evidencing liability on the part of the maker, whether it be commercial paper, a specialty, or other form of legal obligation, has become extinguished or discharged by subsequent events, or by payment, or otherwise, so that the writing has become *functus officio*, but where its existence in an uncanceled state might subject the maker to vexatious litigation at a distance of time when the evidence of such extinguishment or discharge may have been lost, or so obscured as to render the party less able to repel the claim, in all these cases, equity will exert its power to cancel the instrument. *Garrett v. Mississippi and Alabama Railroad*, 1 Freem. Ch. 70. It is immaterial that the instrument is void at law as well as in equity, or whether it be void on its face, or rendered so by the proof in the case. *Hamilton v. Cummings*, 1 Johns. C. R. 517; *Sessions v. Jones*, 6 How. Miss. 123; *Jones v. Perry*, 10 Yerg. 59; *Maise v. Garner*, Mart. & Yerg. 383. Where an estate is vested by deed, the cancellation of it will not divest the estate. *Morgan v. Elam*, 4 Yerg. 375; *Graysons v. Richards*, 10 Leigh, 57. A party whose name has been forged as surety in a replevin bond, may maintain a bill *quia timet* for the cancellation of the bond. *Patterson v. Smith*, 4 Dana, 153.

Where, in a contract, a mode of rescinding it is provided, as by giving notice and repaying the money received, the party cannot rescind it in any other mode. *McKay v. Carrington*, 1 McLean, 50. Equity may relieve against the breach of a contract, not wilful or fraudulent, where full compensation can be made, and the party aggrieved can be placed in *statu quo*. *Skinner v. White*, 17 Johns. R. 357; *Shaeffer v. Slade*, 7 Blackf. 178; *Keltner v. Keltner*, 6 B. Mon. 40. The court must be able to put the parties in *statu quo*; *Pintard v. Martin*, 1 S. & M. Ch. 126; but if fraud, or the act of the party himself, prevents the court from re-instituting the parties, there may be a rescission. *Clay v. Turner*, 2 Bibb, 52. A contract for the sale of land ought

previously to the month of — had frequently accepted bills of exchange for the accommodation of Messrs. D. W. and J. H. W.

not to be rescinded if the parties cannot well be re-instated, and the alleged defect in title is not clearly proved, or if proved, is inconsiderable and unimportant. *Golden v. Maupin*, 2 J. J. Marsh. 236. Rescission is, as a general rule, confined to cases of fraud or palpable mistake; the fraud must be charged in the bill, and must affect the substance of the contract. *Thompson v. Jackson*, 3 Rand. 504. A vendor, by bringing suit for the purchase-money of land and recovering a judgment, ratifies and confirms the sale so that it cannot be set aside at his instance. *Nelson v. Carrington*, 4 Munf. 332. Where a party having objections to a contract, afterwards, without fear or duress, ratified it, it was held, that he had no claim for relief against such confirmation. *Edwards v. Handley*, Hardin, 602. And where a vendee of land, after full knowledge of his right to ask a rescission of the contract, has transferred the possession, rescission will not be granted. *Collier v. Thompson*, 4 Monr. 81. A plaintiff, by a suit at law upon a contract, voidable on account of fraud by the other party, affirms the contract, if he has notice of the fraud, and he cannot afterwards sustain a bill for rescission. *Sanger v. Wood*, 3 Johns. C. R. 416; see also *Sadler v. Robinson*, 2 Stewart, 520; *Finley v. Lynch*, 2 Bibb, 566. So a vendee, who, with full knowledge of the fraud, pays portions of the purchase-money, cannot rescind. *Knuckolls v. Lea*, 10 Humph. 577. A party entitled to rescind, must act promptly, and not sleep on his rights, or take time to speculate on the course of events. If he goes on, with full knowledge of his rights, recognizing the contract as still in force, and by his acts and conduct tacitly gives his assent to its execution, in a manner different from the original understanding of the parties, he is not entitled to rescission. Walk. Ch. 186. The party must be prompt in communicating the fraud when discovered, and consistent in his notice of the use he intends to make of it. *Carroll v. Rice*, Walk. Ch. 373; *Disbrow v. Jones*, Harring. Ch. 102; *Street v. Dow*, Ib. 427; *Davis v. Tarwater*, 15 Ark. 286; *Cain v. Guthrie*, 8 Blackf. 409; *Lamb v. Harris*, 8 Geo. 546; *Alexander v. Utley*, 7 Ired. Eq. 298; *Ayers v. Mitchell*, 3 S. & M. 683; *Taylor v. Fleet*, 1 Barb. 471. Where the parties are in *pari delicto* in regard to the delay, rescission will not be decreed. *Brackenridge v. Dawson*, 7 Ind. 383.

A compromise, induced by fraud and deception, will not prevent the rescission of a contract. *Carr v. Callaghan*, 3 Litt. 365; *Shugart v. Thompson*, 10 Leigh, 436. But a compromise between litigant parties will not be set aside because one of the parties in making the compromise had not a knowledge of all the facts in the case, unless it appears that such party submitted to a greater loss for the sake of the compromise than he would have done had the concealed facts been known to him. *Currie v. Steele*, 2 Sandf. Sup. Ct. 542.

Rescission may be granted under the general prayer for relief; *Prewitt v. Graves*, 5 J. J. Marsh. 114; *Bolware v. Craig*, 6 Litt. 407; and the rescission should be entire; *Glassel v. Thomas*, 3 Leigh, 133; see however, *Prewitt v. Graves*, 5 J. J. Marsh. 114; *Step v. Alkire*, 2 A. K. Marsh. 257.

A party seeking equity must do equity; *Bruen v. Hone*, 2 Barb. Sup. Ct. R. 586; *Hester v. Hooker*, 7 S. & M. 768; *Mumford v. American Life Insurance & Trust Company*, 4 Comst. 463; thus, where anything has been received, repayment must be made, before the court will decree the cancellation of the conveyance; *Miller v. Cotton*, 5 Geo. 341; and where there are incumbrances on land, of which the vendee had knowledge, he will not be entitled to relief, but must rely upon the warranty in the deed. *Stone v. Buckner*, 12 S. & M. 73. But the contract will be rescinded whenever it is tainted by false representations by the vendor relative to his title, and the court may inquire into the whole conduct of the vendor relative to the matter. *Smith v. Robertson*, 2 Ala. 312. If the vendor of land has died insolvent, the vendee may obtain a rescission of the sale, and a return of the purchase-money against his representative for fraudulent representations made by the vendor. *Greenlee v. Gaines*, 13 Ala. 198. Where, in a sale of land to a corporation, the bill alleges that the land has been used for a different purpose from that for which it was authorized to use real estate, by its charter, it was held, that it was no ground for a rescission. *Barrow v. Nashville and Charlotte Turnpike Company*, 9 Humph. 304. Where a lease was made by one only of three trustees, and the lessee having entered and made improvements as provided by the lease, and the *cestui que trust* having received the rents and profits for some years, the latter will not be assisted by a court of equity to avoid the lease. *Vanleer's Appeal*, 24 Penna. State R. (12 Harris,) 224. If a contract is rescinded in equity, the vendee is discharged from the payments of his purchase-money, and entitled to have his bond given up; *Lowden v. Noding*, 8 Ired. Eq. 208; and if he is evicted by a sale of land under an outstanding incumbrance against the vendor, he is entitled to have

then of, &c. And that some time in or about the said month of ——— Application to  
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the contract rescinded and the notes given in payment, cancelled. *Martin v. Atkinson*, 7 Geo. 228. The fact that an obligee of a bond conditioned for the conveyance of real estate, retains possession of the premises, destroys his right to rescind the contract, on the ground of the obligors non-performance on his part. *Brumfield v. Palmer*, 7 Black, 227; see however, *Greenlee v. Gaines*, 13 Ala. 198.

Fraud, as a ground of rescission, and in the sense of a court of equity, properly includes all acts, omissions and concealments, which involve a breach of legal or equitable duty, trust, or confidence, justly reposed, and which are injurious to another, or by which an undue and unconscientious advantage is taken of another. *Gale v. Gale*, 19 Barb., (N. Y.) 249; *Smith v. Mitchell*, 6 Geo. 458; *Esham v. Lamar*, 10 B. Mon. 43; *Reese v. Wyman*, 9 Geo. 430; *Hewitt v. Crane*, 2 Halst. Ch. R. 159; *Phillips v. Moore*, 11 Miss. 600; *Ross v. Meade*, 5 Gilman, 171; *Sheppard v. Henderson*, 3 Gratt. 367. If a seller misled the purchaser by a false or mistaken statement as to any one essential circumstance, the sale is voidable. *Doggett v. Emerson*, 3 Story, 700; *Barbour v. Morris*, 6 B. Mon. 120. It is not, however, sufficient for the plaintiff to raise a suspicion of bad faith, but he must establish it beyond reasonable doubt. *Gould v. Gould*, 3 Story, 516; *Buck v. Sherman*, 2 Doug. 176; *Conway v. Ellison*, 14 Ark. (1 Barb.) 360; *Magniac v. Thomson*, 2 Wallace, Jr. 209; *Kennedy v. Northrup*, 15 Ill. 148; *Skrine v. Simmons*, 11 Geo. 401; *Hargrooves v. Nix*, 14 Id. 316; *West v. Rouse*, lb. 715; see also, *Smith v. Babcock*, 2 W. & M. 246. Where the bill charges, that a false and fraudulent representation was made by the defendant, and his answer asserts an ability to comply with the representation, this puts him on proof of his ability as asserted. *Wellborn v. Tiller*, 10 Ala. 305.

A *bona fide* purchaser of property from a previous grantee, to whom it had been conveyed for the purpose of defrauding creditors, is entitled to protection against the claims of the creditors who were intended to be defrauded by the first conveyance; *Frazer v. Western*, 1 Barb. Ch. R. 220; but a bill will lie in behalf of judgment creditors, to set aside a conveyance made in fraud of creditors by the debtor, who has since deceased; *Trippe v. Ward*, 2 Kelly, 304; and the creditor who first institutes a suit in chancery to avoid a fraudulent conveyance, is entitled to relief, without regard to other creditors standing in the same right, but who have not made themselves joint parties with him. *McCalmont v. Lawrence*, 1 Blatch. C. C. 232. An executrix, however, cannot maintain a bill in equity to set aside a transfer of the property, made by her testator, without consideration, for the purpose of defrauding creditors. *Ordronaux v. Helie*, 3 Sandf. Ch. R. 512. As to where a court of equity will not aid a creditor seeking to enforce a deed of trust in which he has fraudulently obtained an advantage over other creditors, see *Phippen v. Deerham*, 8 Gratt. 457. A sale of property to prevent the lien of expected judgments from attaching, is illegal. *Galt v. Jackson*, 9 Geo. 151. A fraudulent mortgage, duly executed, is binding as between the parties, and conveys the property; but equity will grant a creditor relief against the title of the fraudulent mortgagee. *Parkhurst v. McGraw*, 24 Miss. 134. And an attachment of the property of a debtor by his creditor, gives him a sufficient lien upon the same to entitle him to file a bill in equity to remove a fraudulent incumbrance. *Stone v. Anderson*, 6 Foster, (N. H.) 506. Where a bill, brought to set aside certain conveyances, on the ground of fraud in respect of creditors, in order to avoid the Statute of Limitations, alleges that the fraud was not discovered until within four years of the filing of the bill, the *onus* is on the defendant to show that the plaintiff had notice prior to that time. *Shannon v. White*, 6 Rich. Eq. (S. C.) 96. A bill to set aside a sale of land on an execution, issued on a judgment by confession, upon the ground that there was fraud, must allege specially that it was confessed in fraud of creditors, and not merely that the design was to hinder and delay them. *Printice v. Madden*, 4 Chand. (Wis.) 170.

Where the defendant has transferred to a third person, a note made by the complainant, in fraud of the complainant's rights, the bill should allege that the note was assigned by the defendant, in fraud of the complainant's rights, so as to vest the title in the assignee, and he should claim relief against the defendants on that state of facts. *Mickles v. Colvin*, 4 Barb. Sup. Ct. 304. An expression of belief by the vendor of a note, that the maker is responsible, is equivalent to an assertion that he is so, if made with knowledge that he was not responsible, and constitutes fraud. *Foster v. Swasey*, 2 W. & M. 217. But where a grantor received the note of a third person, upon the representation of the purchaser that the note is good, which turns out afterwards to be false, and retained the note until it was outlawed, without

his acceptance.

ance for a sum of money, and they severally assured your orator that if he would accept or indorse a certain bill of exchange for

offering to restore it to the purchaser, he cannot ask the aid of a court of equity to cancel the sale. *Lears v. Smith*, 2 Mich. (Gibbs,) 243.

To authorize a bill by legatees, next of kin and creditors of a deceased person, against his debtors or his trustee, it must appear that there was collusion between the debtors or trustee, and the personal representatives of the deceased, or some equivalent circumstances or ground, as the insolvency of the executor or administrator; *Nauce v. Powell*, 4 Ired. Eq. 297; *Deaderick v. Walkins*, 8 Humph. 520; and the facts to sustain the allegation of collusion should be set out in the bill. *Green v. Creighton*, 10 S. & M. 159.

A deed from a female child, just of age and living with her parents, made to a trustee for the benefit of one of those parents, founded on no real consideration, executed under the influence of misrepresentation by the parents, and containing in its preamble a recital of false statements, was ordered to be set aside and the property reconveyed to the grantor; *Taylor v. Taylor*, 8 How. (U. S.) 183; but where a father had fraudulently conveyed land to trustees for the benefit of two of his children, it was held, that after his death his other heirs could not maintain a bill in equity, to set aside such conveyance, on the ground of fraud. *Ober v. Howard*, 11 Miss. 425; see also, *Eyre v. Potter*, 15 How. (U. S.) 42.

A decree of the Orphans' Court, rendered on the final settlement of an administrator's account, will not be opened in equity when impeached for fraud, on proof of an error or mistake merely; and where it is opened on the ground of fraud, the whole of it is unravelled; and if permission is given to surcharge or falsify, the onus is on the party who alleges mistakes, to prove them; *Cowan v. Jones*, 27 Ala. 317; and the intrinsic character of proceedings in courts of law, as well as *in pais*, is subject to the scrutiny of a court of equity. *Surget v. Byers*, 1 Hemp. 715; see *Gifford v. Thorn*, 1 Stockt. (N. J.) 702.

Agents are not permitted to deal validly with their principal in any case, except where there is the most entire good faith, and a full disclosure of all the facts and circumstances, and an absence of all undue influence, advantage, or imposition; *Brooks v. Berry*, 2 Gill, 83; and a conveyance obtained by a general agent from his principal, will be vacated for fraud in obtaining it; or for the incompetency of the principal to manage his own business, or for inadequacy of consideration, so great as to render the transaction unjust, unequal, and unconscientious. *Ib.* See also, *Michael v. Michael*, 4 Ired. Eq. 349. The same principle of good faith applies between co-owners; thus, where A., B. & C., are interested in a lease which is about to expire, and A. undertakes to procure a renewal for the benefit of all, but takes it in his own name, it will enure to the benefit of all. *Burrell v. Bull*, 3 Sandf. Ch. R. 15.

An original bill may be filed to impeach a judgment in partition for fraud, and equity will relieve against a partition made in compromise, for fraud in its procurement; *De Louis v. Meek*, 2 Greene, (Iowa,) 55; *Powell v. Spalding*, 3 Iowa, 443; and to make a *prima facie* case of fraud against a title, under a decree in partition, the petition must aver, that all the intermediate grantees, as well as the defendant, had notice. *Brace v. Reid*, 3 Iowa, 422. A decision of land commissioners, obtained by fraud, may also be relieved against. *Farber v. Levi*, 1 Morris, 372; *United States v. Hughes*, 11 How. (U. S.) 552.

Courts of equity will entertain jurisdiction to cancel or set aside an instrument, void on the face of it; *Hays v. Hays*, 2 Carter, (Ind.) 28; but they will not interfere to enforce the execution of an agreement, made in defiance of law, nor annul it if already executed. *Swartz v. Gillett*, 1 Chand. (Wis.) 207; *Stevens v. Ryerson*, 2 Halst. Ch. R. 477.

Fraudulent misrepresentation and concealment, by a vendor of land, as to the nature, quality and quantity thereof, affecting the whole subject-matter of the contract, entitle the vendee to a rescission of the contract, and he will not be put to his remedy at law for compensation in damages. *Boyce v. Grundy*, 3 Pet. 210; *McAlister v. Barry*, 2 Hay. 290; *Spence v. Duren*, 2 Ala. 251; *Harris v. Carter*, 3 Stewart, 233; *Pitts v. Cottingham*, 9 Porter, 675; *Harris v. Williamson*, 4 Hey. 124; *Lewis v. McLemore*, 10 Yerg. 206; *Walker v. Dunlop*, 5 Hey. 271; *Stephenson v. Taylor*, 1 A. K. Marsh. 235. And where one person misrepresents fact, and another acts on the faith of this representation, it is immaterial in a court of equity whether the party making the statement knew it to be true or false; and a conveyance of land so obtained is held to be void. *Harding v. Randall*, 15 Maine, 332; see also, *The State v. Holloway*, 8 Blackf. 45; *Taymon v. Mitchell*, 1 Maryland, Ch. Decis. 496; *Reese v.*



them the said D. W. and J. H. W. they could procure the same to be discounted, and that they or one of them would punctually provide

*Wyman*, 9 Geo. 430. And if a person, relying upon the information derived from the vendor, has purchased and paid for land which proves of no value, he is entitled to rescind the contract, though the misrepresentation by the vendor proceeded from mistake, without fraud. *Champlin v. Laytin*, 6 Paige, C. R. 189; *Oswald v. McGee*, 28 Miss. (6 Cush.) 340. A misrepresentation by a vendor, in order to constitute a ground for a rescission of the contract, must, however, be in reference to some material thing, unknown to the vendee, either from not having examined, or for want of opportunity to be informed, or from entire confidence reposed in the vendor; and his remedy must be pursued in good time after the injury is discovered. *Halls v. Thompson*, 1 S. & M. 443. But where the facts lie equally open to the vendor and vendee, with equal opportunity of examination, and the vendee undertakes to examine for himself, without relying upon the vendor's statements, it is no evidence of fraud that the vendor knew facts not known to the vendee, and does not make them known to him. *Halls v. Thompson*, 1 S. & M. 443; see *Hough v. Richardson*, 3 Story, 659; *Yeates v. Prior*, 6 Eng. 58.

Where a deficiency is material, a misrepresentation as to the quantity will be relieved against. *Belknap v. Sealey*, 2 Duer, 570. A false representation or concealment, by a vendor of land, in respect of the title, is fraudulent, and the vendee will be relieved from the contract in equity, although the outstanding superior title is on record. *Parham v. Randolph*, 4 How. (Miss.) 435. So also, where a mortgagor, by false and fraudulent representations, induced the mortgagee to believe, when the latter loaned money and accepted the mortgage as security, that it covered more and other land and buildings than it really did, a court of equity will, as against the mortgagor and voluntary assignees, reform the mortgage, and apply it to and enforce it on the lands and buildings fraudulently omitted. *De Peyster v. Husbrouck*, 1 Kernan, (N. Y.) 582. Nevertheless, a mere matter of opinion, expressed by a vendor of land, in good faith, in respect to the title to the land sold by him, and the probable decision of the court thereon should it be contested, is not ground for the rescission of the contract, because it turns out not to be correct, there being no particular confidential relation subsisting between the parties. *Mancy v. Porter*, 3 Humph. 347; see also, *Glasscock v. Minor*, 11 Miss. 655. In like manner, false reasoning upon facts truly stated, is no ground for relief. *Bowman v. Bates*, 2 Bibb, 47. On a bill for rescission of a contract, on the ground of a false representation, it is not necessary for the complainant to prove the exact words of the representation; it is sufficient to prove their import; *Taylor v. Fleet*, 1 Barb. 471; but it must appear that the other party intended a deception and was successful therein, to the damage of the party defrauded. *Pratt v. Philbrook*, 33 Maine, (3 Red.) 17.

A fraudulent misrepresentation by a stranger, is not sufficient to rescind a deed of conveyance; *Fisher v. Boody*, 1 Curtis, C. C. 206; and the fraud of the party must be fraud at the time of the execution of the instrument, and not in a subsequent and distinct transaction. *Chesterman v. Gardner*, 5 Johns. Ch. R. 29; *Maney v. Porter*, 3 Humph. 347; *White v. White*, 5 J. J. Marsh. 444.

As respects the large class of cases in which mistake furnishes an adequate ground for relief, it is to be remarked that *ignorantia legis neminem excusat*, is a maxim which is as much respected in equity as at law; *Robinson v. Cathcart*, 2 Cr. C. C. 610; and a court of chancery will not undertake to relieve parties from their acts and deeds fairly done, though under a mistake of the law. *Lyon v. Richmond*, 2 Johns. Ch. 60; see also, *Rankin v. Mortimer*, 7 Watts, 374; *Good v. Herr*, 7 W. & S. 256; *McAninch v. Laughlin*, 1 Harris, 371; *Magniac v. Thomson*, 2 Wall. Jr. 209; *Hinchman v. Emans*, Saxton, 100; *Beebe v. Swartwout*, 3 Gilman, 162; *Brown v. Armistead*, 6 Rand. 594; *Manner v. Washington*, 3 Strobb. Eq. 171; *Hall v. Reed*, 2 Barb. Ch. R. 500; *Larkins v. Biddle*, 21 Ala. 252; *Arthur v. Arthur*, 10 Barb. Sup. Ct. 9; *Ferguson v. Ferguson*, 1 Geo. Decis. 135; see also, *Leavitt v. Palmert*, 3 Const. 19; *Farley v. Bryant*, 32 Maine, 474; *Dupree v. Thompson*, 4 Barb. Sup. Ct. 279; although one of the parties was at the time of contracting, ignorant of the law, and disturbed by his fears, he will not be aided, unless the adverse party has been guilty of improper conduct in obtaining the contract; *Gunter v. Thomas*, 1 Ired. Ch. 199; *Sparks v. White*, 7 Humph. 86; and the fact of not fully understanding the effect of an agreement at the time of its execution, is no ground for relief against it. *Dow v. Ker*, Sparks, Ch. 413. So, also, in accordance with this principle, it has been held, that the fact that purchasers of land, sold on execution, were at the time of the sale ignorant of certain conveyances of the premises, made before the date of the judgment on which the execution issued, and recorded in the proper office, does not entitle them to relief from

Plaintiff accepts a bill at \*your orator with the money to take up the same. And your orator relying upon such promise agreed to accept such bill of exchange

the payment of the purchase-money. *Hand v. Grant*, 10 S. & M. 514 see also, *Patton v. Taylor*, 7 How. U. S. 132. A court of equity, however, may interfere and grant relief for a mistake of law, where it is so gross and palpable as to superinduce the belief that some advantage was taken of the party, from imbecility of mind, or the exercise of improper influence. *Haden v. Ware*, 15 Ala. 149; *Mellish v. Robertson*, 25 Vt. (2 Deane,) 603; *Smith v. McDougal*, 2 Cal. 586.

In regard to mistakes of fact, the general rule is, that where an act is done or contract made, under a mistake or ignorance of a material fact, it is voidable and relievable in equity; *Miles v. Stevens*, 3 Barr, 37; and where the mistake is of the facts constituting the essence of the contract, or founded upon representations of the seller material to the bargain, and constituting the essence thereof, it will be avoided, although the mistake be an innocent one. *Daniel v. Mitchell*, 1 Story, 173; *Glassell v. Thomas*, 3 Leigh, 113; *Miles v. Stevens*, 3 Barr, 21. But the mistake must be as to a fact of such a nature that the party could not by reasonable diligence get knowledge of it when put upon inquiry. *Taylor v. Fleet*, 4 Barb. Sup. Ct. 95; *Pharr v. Russel*, 7 Ired. Eq. 222. The proof of the mistake must be clear and strong; *Beard v. Hubbell*, 9 Gill, 420; and unless the bill contains the requisite allegations in regard to mistake, the court will not grant relief under this head of equity jurisprudence; *White v. Denman*, 1 Ohio State R. 110. Nor is a party stopped from asserting his rights to property because he stood by and saw it sold without objection, and acquiesced in the sale for some time, under a clear mistake as to his own title, which was of a doubtful character, and although acquainted with all the facts upon which such title arose. *Lamott v. Bowly*, 6 Har. & J. 500. No relief will be afforded against a contract of sale, because a fact lying in doubt in relation to the subject-matter of the sale, turned out differently from what was expected by both parties; *Ashcom v. Smith*, 2 Penn. 211; but in proper cases, mistakes and written contracts may be corrected and reformed not only between the original parties, but between those claiming under them in privity, such as personal representatives, heirs, devisees, legatees, assignees, voluntary grantees, and judgment-creditors, or purchasers from them with notice of the facts. *Wyche v. Green*, 11 Geo. 159; *Ligon v. Rogers*, 12 Id. 281; *Wall v. Arrington*, 13 Geo. 88.

A court of equity has, nevertheless, no power to change contracts fairly entered into; nor can it, unless under special circumstances, relieve against the consequence of the non-performance of a condition precedent. *Rives v. Toulmon*, 25 Ala. 452; *Vallette v. Whitewater Valley Canal Company*, 4 McLean, 192; *Warburton v. Lavaman*, 2 Greene, (Iowa,) 420; and a mistake in the intention of one party, the other being guilty of no fraud, is no ground for relief. *Ruffner v. McConnell*, 17 Ill. 212. But the court cannot be called upon to restore surrendered rights in the absence of fraud or mistake, or to make contracts for parties who have made none, or enforce them, when uncertain. *Oakley v. Ballard*, 1 Hemp. 475. Nor can a party be relieved who has made a disadvantageous contract from carelessness or inattention, and where there has been no mistake or fraud. *Robertson v. Smith*, 11 Texas, 211. But where land is sold for so much an acre, and the contract is closed on the measurement of an artist who is employed by the parties to ascertain the number of acres, and securities are given for the purchase-money, a mistake of the artist, as to the quantity of land, will be relieved against; *Jenks v. Fritz*, 7 Watts & Serg. 201; *Grundy v. Grundy*, 12 B. Monr. 269; but a small deficiency, which might have resulted from inaccuracy in the survey, will not entitle the vendee to relief. *Weaver v. Carter*, 10 Leigh, 37. And where a deed conveys land for a consideration in gross, described as containing one hundred acres, be the same more or less, neither party can claim relief on account of any deficiency or surplus, unless it be of such a character as to induce belief of fraud or mistake. *Smallwood v. Hatton*, 4 Md. Ch. Decis. 95. In like manner, where, by a mistake of boundaries in a deed, more land is included than was intended, equity will not reform the boundaries after the land has passed to a *bonâ fide* purchaser without notice. *Whitman v. Weston*, 30 Maine, (17 Shep.) 285; *Farley v. Bryant*, 32 Id. (2 Red.) 474. In *Davis v. Rogers*, 33 Maine, (3 Red.) 222, it was held, that a bill in equity to reform a conveyance of real estate, on the ground of accident or mistake, will be defective on demurrer, unless the persons under whom the defendant claims by deeds of warranty, made since the alleged mistake or accident, are made parties, and unless an allegation is contained in the bill that the grantees, in such deeds, purchased with notice of the mistake or accident. *Davis v. Roger*, 33 Maine, (3 Red.) 222. Where the price of land sold is regulated by the quantity, and the quantity proves to have been mistaken, the vendee is entitled to relief; and he may

to be drawn upon him by the said D. W. and J. H. W. And three months  
your orator further sheweth that the said D. W. and J. H. W. for 280l.

take the land and have compensation for the deficiency. *Stebbins v. Eddy*, 4 Mason, 414. And where both parties are mistaken as to the situation of the land, and circumstances materially affecting its value, the contract will be rescinded. *Chamberlaine v. Marsh*, 6 Munf. 283. If, by mistake of both vendor and vendee, a deed did not cover the land intended to be sold and bought, the money paid on account of the purchase-money may be decreed to be repaid, and the bond and mortgage of the purchaser to be cancelled. *Blair v. McDonnell*, 1 Halst. Ch. (N. J.) 327; see also, *Osborn v. Phelps*, 19 Com. 63. So where a party held a deed of real estate, which he knew at the time of receiving it covered more than his purchase, he was ordered to quit-claim to the real owner that part which he fraudulently claims to hold, although the real owner was not his immediate grantor. *Busby v. Littlefield*, 11 Foster, (N. H.) 193; see also, *Butler v. Miller*, 15 B. Monr. (Ky.) 617; *Blodgett v. Hobart*, 18 Vt. (3 Washb.) 414. If a complainant make application to a court of equity to have an alleged misdescription of land, sold on execution, corrected, the relief sought is in the nature of a bill, and will not be granted unless the evidence that there was a mistake is clear, unequivocal, and decisive. *Carnall v. Wilson*, 14 Ark. (1 Barb.) 482.

Equity corrects mistakes in written instruments, when it is shown by clear and satisfactory proof, that the terms of the instrument are not conformable to the real intent of the parties; *Linn v. Barkey*, 7 Ind. 69; *Davidson v. Greer*, 3 Sneed, (Tenn.) 384; *Trout v. Goodman*, 7 Geo. 383; *Warburton v. Lawman*, 2 Greene, (Iowa,) 420; *Coffing v. Taylor*, 16 Ill. 457; *Stone v. Hale*, 17 Ala. 557; but the evidence of the alleged mistake must be free from doubt. *Mosby v. Wall*, 23 Miss. (1 Cush.) 81; *Goldsborough v. Ringgold*, 1 Maryland Ch. Decis. 239; *Baily v. Bailey*, 8 Humph. 230; *McKay v. Simpson*, 6 Ired. Eq. 452; *Farley v. Bryant*, 32 Maine, (2 Red.) 474; *Stedwell v. Anderson*, 21 Conn. 139; *Wyche v. Greene*, 11 Geo. 159. Thus, a mistake clearly proved, by which the word "heirs" was omitted in a deed, will be corrected by a court of equity; *Rutledge v. Smith*, 1 Busbee, Eq. (N. C.) 283; and where, in a deed of land, the intention to convey a fee fails to do so, the deed may be reformed by the court, or the parties may of themselves do the same thing; *Wright v. Delafield*, 23 Barb. (N. Y.) 498. A mistake in the date of a certificate of the record of a deed may be corrected, not by changing the certificate, but by compelling a release by those claiming on account of it. *Hiatt v. Calloway*, 7 B. Monr. 178.

But a will cannot be corrected upon the ground of mistake, by striking out the name of the legatee and inserting that of another person inadvertently omitted by the drawer or copyist; *Yates v. Cole*, 1 Jones, Eq. (N. C.) 110; nor can a court of equity fill up a blank in a will, or restore a bequest, which it is alleged was originally in the will, but was fraudulently obliterated by the executor, or some other person, before the probate; the will must be taken as it is certified from the Court of Probate; *Trexler v. Miller*, 6 Ired. Eq. 248; but where the testator has mistaken the christian name of a legatee, the court has power to correct the error. *Wood v. White*, 32 Maine, (2 Red.) 340.

Chancery has jurisdiction also to correct a mistake in a policy of insurance, and to grant appropriate relief if a loss occur under the policy. *Firemen's Ins. Co. v. Powell*, 13 B. Mon. 311. Where several underwriters in a policy of insurance agreed that all the suits against each for a loss, should abide and follow the event of one, the agreement was set aside, upon proof of a difference in the several cases, unknown to the defendants at the time of the agreement. *Alexander v. Muirhead*, 2 Dessau. 162. If A. pays to B. a full price for property, and a contract is drawn through mistake to A. & C., the latter being absent and having no participation in the arrangement, and A. ignorantly accepts the contract, C. cannot hold in equity against A., though he may have been a creditor of B. *McCunn v. Letcher*, 8 B. Mon. 320. Where a party alleges a mistake in the drawing of a deed or other instrument, he must become an actor in seeking to reform it; until reformed, it is the highest evidence of the contract, and cannot be contradicted or varied by parol proof. *Hogan v. Smith*, 16 Ala. 600. A court of equity will rectify a mistake in a written instrument, by the aid of parol evidence, as between the original parties, but as against *bonâ fide* purchasers without notice, the instrument must stand as written. *Kilpatrick v. Kilpatrick*, 23 Miss. (1 Cush.) 124; *Wall v. Arrington*, 13 Geo. 88; *Bellows v. Stone*, 14 N. H. 175. And where a party seeking to set up in chancery a restriction in the use and enjoyment of a purchase, by an alleged parol agreement, by mistake not having been inserted in the deed, he must be confined to the agreement set out in his bill, though the proof may exceed the allegation. *Athey v. McHenry*, 6 B. Mon. 50. If a fact is equally unknown to both parties, as where each has equal and adequate means of

accordingly drew upon your orator a certain bill of exchange for the sum of £280 dated the — day of — and payable three months

information, or where the fact is doubtful from its own nature, in every such case, if the parties have acted in entire good faith, a court of equity will not interpose. *McCobb v. Richardson*, 24 Maine, 82; *Belt v. Mehen*, 2 Cal. 159; see also, *Hunter v. Gowdy*, 1 Ham. 449; *Crowder v. Langdon*, 3 Ired. Ch. 476; *Hough v. Richardson*, 3 Story, 659. Nor will equity interfere to aid one creditor against another, for a mistake, where both are equally meritorious. *Knight v. Bunn*, 7 Ired. Eq. 77. But where both parties, to a contract for the sale of land, are under a mistake with regard to the vendor's title, which was supposed to be perfect but proves void, a court of equity will relieve the vendee from the contract. *Haddock v. Williams*, 10 Verm. 570; *Irick v. Fulton*, 3 Gratt. 193. And where there is a mutual misconception of the rights of the parties, amounting to a mistake of law, by which the object of the contract is defeated, it may be set aside. *Champlin v. Layton*, 1 Edw. Ch. 467; *Nabours v. Cocke*, 24 Miss. 44.

As respects inadequacy of consideration, the general rule, established by numerous cases is, that inadequacy alone will not, of itself, sustain a charge of fraud, so as to justify rescission, unless the inadequacy is so gross as to furnish proof of fraud or undue advantage, or unless other circumstances are connected therewith, which may induce a chancellor to rescind. *Howard v. Edgell*, 17 Verm. 9; *Green v. Thompson*, 2 Ired. Ch. 365; *Butler v. Haskell*, 4 Dessau. 651; *Newman v. Meek*, 1 Freem. Ch. 441; *White v. Flora*, 2 Overton, 426; *Hardenan v. Burge*, 10 Yerg. 202; *Knobb v. Lindsay*, 5 Ham. 468; *Osgood v. Franklin*, 2 Johns. Ch. R. 1; *Mann v. Betterly*, 21 Vt. (6 Washb.) 326; *Wintermute v. Snyder*, 2 Green, Ch. 489; *Stubblefield v. Patterson*, 3 Hay. 128; *DeLafield v. Anderson*, 7 S. & M. 630; *Holmes v. Fresh*, 9 Miss. 201; *Wright v. Wilson*, 2 Yerg. 294; *Potter v. Everitt*, 7 Ired. Eq. 152; *Wormack v. Rogers*, 9 Geo. 60; *McArtee v. Engart*, 13 Ill. 242; *Judge v. Wilkins*, 19 Ala. 765; *Cribbins v. Markwood*, 13 Gratt. (Va.) 495. But if there has been delusion on the part of the grantor, known to the grantee, there may be rescission; *Holden v. Crawford*, 1 Aik. 390; or inequality in the condition of the parties; *George v. Richardson*, Gilmer, 230; although it is otherwise if the complainant was himself in fault for the inadequacy of price. *Forde v. Herron*, 4 Munf. 316. It has been held, that the rule that a sale will be set aside for inadequacy of price, applies only to private sales, and not to auction sales; *Newman v. Meek*, 1 Freem. Ch. 441; yet it is said, in the same case, that if a purchaser at an auction sale, by fraudulent management, or misrepresentation, prevents the attendance of others, or uses any influence to put down fair competition in bidding, equity will interpose and set aside the sale, on the ground of fraud.

The inability of the vendee to make a good title at the time the decree is pronounced, though it forms a sufficient ground for refusing specific performance, will not authorize a court of equity to rescind the agreement in a case where the parties have an adequate remedy at law for its breach. *Hepburn v. Dunlop*, 1 Wheat. 179; *Dunlop v. Hepburn*, 2 Id. 231; *Wilty v. Hightower*, 6 S. & M. 345. But if the contract ought not in conscience to bind one of the parties, as if there had been mistake or fraud, a court of equity will interpose and set aside the contract; *Dunlop v. Hepburn*, 2 Wheat. 231; and where it is apparent at the hearing, that a perfect title may be made, and no fraud is alleged or proved, the contract will not be rescinded; *Fletcher v. Wilson*, 1 S. & M. Ch. 376; but where the vendor cannot make title, and is insolvent, and the covenants for title, and the payment of the purchase-money are independent, the contract of sale will be rescinded at the instance of the vendee. *Long v. Brown*, 4 Ala. 622. If neither actual nor threatened eviction is charged, the insolvency of the vendor alone will not be sufficient ground for relief; *Latham v. Morgan*, 1 S. & M. Ch. 611; and in *Parks v. Brooks*, 16 Ala. 529, it was held, that where the vendor, although unable to make title, was solvent, the contract would not be rescinded on the ground that he is a resident of another State, if he was such at the time of the contract, and has so continued. If the vendor, at the time of the decree, is able to make a good title, equity will not relieve for a defect at the time of the sale; *Syme v. Johnston*, 3 Cal. 558; the vendor may complete the title at any time before hearing. *Clauton v. Burges*, 2 Dev. Ch. 13; see also, *Wickliffe v. Lee*, 6 B. Monr. 543; *Westall v. Austin*, 5 Ired. Eq. 11. Where a purchaser has accepted a conveyance, and is in the undisturbed and unquestioned possession of the property, he cannot, where there is no fraud or mistake, sustain a bill to rescind the contract, on the ground that there is an outstanding title in another, by which the purchase may at some time be defeated; *Van Lew v. Parr*, 2 Rich. Eq. 321; *Coster v. Griswold*, 4 Edw. Ch. 364; see also, *Lanier v. Hill*, 25 Ala. 554; and where he continued in possession and en-

after date, which your orator thereupon accepted. And your orator further sheweth unto your honors that the said bill of exchange having been delivered by your orator to the said D. W. and J. H. W. without any consideration whatsoever had or received by your orator for the same, the said D. W. and J. H. W. ought either to have provided your orator with the money to take up the same when due as they had promised or else have re-delivered the same to your orator to be cancelled, but previously to the same becoming due a commission of bankrupt under the great seal of Great Britain was awarded and issued against them the said D. W. and J. H. W. bearing date on or about the — day of — now last past, and the said D. W. and J. H. W. were duly found and declared bankrupts by the major part of the commissioners in the said commission named. And G. T. of, &c. W. C. of, &c. W. B. B. of, &c. and W. B. of, &c. having been duly chosen assignees of the estates and effects of the said bankrupts, the usual assignment thereof hath been made to them as such assignees by the major part of the commissioners in the said commission named; and your orator hoped that the said G. T. W. C. W. B. B. and W. B. would have provided your orator with the money to take up the said bill of exchange when the same became due, or else would have re-delivered the same or caused the same to have been re-delivered to your orator to be cancelled, and that no proceedings would have been had against your orator to recover the amount thereof, as in justice and equity ought to have been the case. BUT NOW SO IT IS may it please your honors that the said G. T. W. C. W. B. B. and W. B. combining and confederating to and with J. J. of, &c. and T. O. of, &c. and with divers other persons, &c. [see form IV. p. 5.] they the said confederates absolutely refuse to deliver or cause or procure to be delivered up to your orator the said

The drawers  
become bank-  
rupts.

Assignees  
chosen.

Defendants  
refuse to deli-

joyment of the land for fifteen years, with a full knowledge of all the facts affecting his title, his heirs were refused a rescission of his contract. *Lacey v. McMillen*, 9 B. Monr. 523; see also, *Maner v. Washington*, 3 Strobb. Eq. 171. In *Beale v. Seively*, 8 Leigh, 658, the vendee was in possession under a conveyance with general warranty, and it was held by the court, that he could not be relieved against the payment of the purchase-money unless the title be questioned by suit threatened or prosecuted, or unless he can show a defect of title, in respect to which the vendor has been guilty of fraudulent representation or concealment, and which the vendee at the time had no means of discovering. The complainant must show clearly the defect of title, or the fraud which he alleges to exist. He cannot ask the defendant to deduce his title, he must himself show the defect in order to obtain a rescission. *Moss v. Davidson*, 1 S. & M. 112. The vendee, if he seeks to rescind the contract, must offer to return the land to the vendor. A declaration that the vendor is unable to make title, and that the vendee is willing to pay the purchase-money on receiving a complete title, does not authorize a rescission. *Fitzpatrick v. Featherstone*, 3 Ala. 40. And where the contract to sell has been executed by a conveyance, a defect in the title, in a case free from fraud, will not be sufficient ground for rescission. The purchaser is left to his remedy at law. *Woodruff v. Bunce*, 9 Paige, C. R. 443. So if in an assignment of a mortgage of real estate, both parties suppose the title to be good, a defect in the title at the time of the assignment will not of itself alone entitle the vendor to reclaim the purchase-money. *Butman v. Hussey*, 30 Maine, (17 Shep.) 263.

In a bill to set aside a deed, on the ground that the grantor was mentally incompetent to make it, the proper allegation, for the purpose of putting his competency in issue is, that he was incapable of transacting any business, though a statement of the circumstances from which such conclusion is drawn, may be sufficient. *Harding v. Handy*, 11 Wheat. 103.

ver up the bill to be cancelled, and defendant T. O. has commenced an action against the plaintiff to recover the amount.

Pretence that the bill was given by the plaintiff for a valuable consideration.

Charge the contrary to be true, and that

[ \*31 ]

the same was delivered to the bankrupts for their accommodation. Pretence by defendant J. J. that he discounted the same for a full valuable consideration without notice of the circumstances attending the making of it, and that he indorsed it to the defendant T. O. without notice.

Charge the contrary to be true.

Charge that defendant J. J. had received notice from the plaintiff and the bankrupts.

bill of exchange to be cancelled, and instead thereof the said T. O. hath got into his possession the said bill and hath lately commenced an action at law against your orator to recover the amount thereof, the said confederates or some of them at times giving out and pretending that the said bill of exchange was made and given by your orator to the said bankrupts for a full valuable consideration or considerations in money. Whereas your orator expressly charges the contrary thereof to be the truth, and that your orator never had or received any good or valuable consideration or considerations for the said bill of exchange, and that the same was delivered by him to the said bankrupts D. W. and J. H. W. for their accommodation, without receiving any consideration or considerations for the same, and upon the firm reliance that they or one of them would supply your orator with the money to take the said bill up when the same became due and payable; And so the said confederates will sometimes admit, but then the said \*confederate J. J. pretends that he discounted the said bill of exchange for full valuable considerations in money or otherwise at the time when the said bill was indorsed to him, and that when he paid or gave the full valuable consideration or considerations for the same he had not notice that the said bill had been given by your orator in the manner and upon the express stipulations hereinbefore mentioned, or without a full valuable or any consideration received by your orator for the same, and that therefore your orator ought to pay the amount thereof. And the said J. J. further pretends that he indorsed the said bill of exchange to the said T. O. for good and valuable considerations before he the said J. J. received any notice from your orator, of the terms upon which the same had been obtained from your orator, and before your orator had requested him to deliver up the same. Whereas your orator charges the contrary of all such pretences to be true, and particularly that the said J. J. did not ever give pay or allow to the said bankrupts or either of them the full value of any consideration whatever for the said bill of exchange; and that the said J. J. had full notice or had some reason to know believe or suspect that the said bill had been given by your orator to the said bankrupts in the manner and upon the express stipulation herein before mentioned, and without any valuable or other consideration having been received by your orator for the same. And your orator further charges that the said J. J. received the said bill from the said bankrupts to get the same discounted for them and with an express undertaking on his part to deliver over the money he obtained upon such bill to them the said bankrupts, but that he never did procure such bill to be discounted or if he did he applied the moneys he obtained upon the same to his own use, and never paid or delivered over any part thereof to the said bankrupts or either of them. And your orator further charges that the said J. J. hath received notice from your orator and the said bankrupts of the terms upon which the said bill had been obtained by the said bankrupts and had been required by your orator to deliver up the same to him before he the said J. J. had indorsed the said bill of exchange to

the said T. O. and as evidence thereof your orator expressly charges that the said J. J. had the said bill of exchange in his custody possession or power on the — day of — last past: and that the said J. J. did on the — day of — last offer the said bill of exchange for sale together with other bills to various persons within the walls of the King's Bench prison. And your orator further charges that Messrs. R. & S. as your orator's solicitors did on the — day of the said month of — by the direction of your orator write and send or cause to be written and sent unto the said J. J. a certain letter in the words and figures or to the purport and effect following (that is to say): "Sir," &c. &c. And your orator further charges that not having received any answer to the said letter your orator's said solicitors did on the — day of the said month of — write and send or cause another letter to be written and sent to the said J. J. in the words and figures or to the purport and effect following (that is to say): "Sir," &c. &c. And your orator charges that the said J. J. did at the time that the \*said bill was indorsed by him to the said T. O. well know that the said D. W. and J. H. W. had become bankrupts. And your orator further charges that the said J. J. was on the said — day of — last past an insolvent and confined in the King's Bench prison for debt with the said D. W. and J. H. W. And your orator further charges that the said J. J. did not receive any good or valuable consideration for indorsing the said bill of exchange to the said T. O. but that the same was contrived between them in order to compel your orator to pay the said bill when the same became due. And the said confederate T. O. pretends that he gave the value of the said bill of exchange for which he hath commenced his said action in goods which were at fair and reasonable prices and were sold by him in the way of his trade, and at other times he will admit that he did not give any value for the said bill in cash bank notes or goods, but that the said J. J. was at the time indebted to him in considerable sums of money and that therefore the said bill of exchange was indorsed and delivered over to him in satisfaction or payment of the said debt, but he refuses to discover how and in what manner the said debt arose or what is the amount thereof or when the said bill of exchange was indorsed to him. Whereas your orator expressly charges that the said T. O. did not ever give pay or allow to the said J. J. or any other person or persons the full value or any consideration for the said bill of exchange; and that the said T. O. was at the time that the said bill of exchange was indorsed to him well aware or had some reason to believe or suspect that the said D. W. and J. H. W. had become bankrupts, and that the said J. J. was then insolvent and confined in the King's Bench prison for debt with the said D. W. and J. H. W. and that the said J. J. had previously offered the said bill for sale (together with other bills) within the walls of the King's Bench prison to several persons who had refused to purchase the same. But in case the said T. O. did give any consideration or considerations for the said bill of exchange (which your orator does not admit) your orator charges that such consideration or considerations consisted wholly or in part of goods and that such goods were not

Evidence in support thereof.

[ \*32 ]

Charge that defendant J. J. was an insolvent, and confined in King's Bench prison, with the bankrupts. That he did not receive any consideration for indorsing same to defendant T. O. Pretence that defendant T. O. gave the full value of the bill in goods.

Charge the contrary to be true.

Charge that defendant J. J. had previously offered the bill to several persons for sale. That if any consideration

was given, the same was in goods sold at exorbitant prices.

Charge that defendant T. O. had notice that the plaintiff and the bankrupts had not received any consideration.

Charge that defendant T. O. is a trustee, and is indemnified from costs.

[ \*33 ]

Pretence that the plaintiff is indebted to the assignees and that the bill was accepted by the plaintiff for such debt.

Charge that defendant T. O. intends to proceed in his action.

Charge as to books, &c.

Prayer.

nearly the value thereof and that the prices charged in the bills of parcels or invoice thereof were very exorbitant and given merely as a colorable value for the said bill of exchange. And your orator further charges that at the time of the said bill of exchange being indorsed or delivered to the said T. O. and of his paying or giving such consideration or considerations (if any were or was paid by him) he knew or had been informed or had some reason to know believe or suspect that your orator and the said bankrupts had never received the full or any consideration for the said bill of exchange and he well knew or had been informed that your orator had accepted the said bill of exchange for the accommodation of the said bankrupts without having received any consideration for the same. And your orator further charges that the said T. O. is a trustee for the said bill of exchange for the said confederate J. J. or for some other person or persons whose names he refuses to discover, and that he holds the same for the said confederate J. J. or for such person or persons without having given any \*consideration or considerations for the same, and that if he recovers the amount of the said bill of exchange or any part thereof he is to deliver over or pay the same to the said J. J. or such person or persons, and that he is indemnified by the said J. J. or such other person or persons from all the costs attending the attempt to recover upon the said bill of exchange on which he has brought his said action at law. And sometimes the said confederates G. T. W. C. W. B. B. and W. B. pretend that your orator is indebted to them as such assignees as aforesaid in some sum or sums of money but in what sum of money or how or in what manner and at what time or upon what account they refuse to discover, and they allege that the said bill of exchange was accepted by your orator for such pretended debt. Whereas your orator charges the contrary thereof to be the truth and that the said bankrupts well knew and have admitted that your orator never received any consideration for accepting the said bill as aforesaid and that they had actually forgotten what they had done with the said bill and did on the — day of — write a letter to your orator stating that they had lost the said bill and requesting him not to pay the same if it should be presented to your orator for payment. And notwithstanding the said T. O. got the said bill of exchange into his possession without giving any consideration for the same yet he threatens and intends to proceed in his action at law and in case he should recover judgment to take out execution against your orator for the amount thereof. And your orator further charges that the said several defendants or some or one of them now have or hath or lately had in their or one of their custody possession or power some book or books of account letters documents or writings from which the truth of the several matters and things aforesaid would appear. And so it would appear if the said defendants would set forth a full true and particular account of all such books of account letters documents and writings. All which actings, &c. [*see form VI. p. 5, interrogating to the stating and charging parts.*] And that the said defendant T. O. may be decreed to deliver up and the said G. T. W. C. W. B. B. W. B. and J. J. be decreed to procure the said bill of exchange to be delivered up to your orator to be cancelled as having



been given by your orator and received by the said bankrupts D. W. and J. H. W. and the said several defendants without any consideration. And that the said defendants respectively may be restrained by the injunction of this honorable court from proceeding in any action at law already commenced against your orator upon the said bill of exchange and from commencing any other proceedings at law against your orator upon the said bill, and that they may also be restrained from negotiating indorsing or delivering over the said bill of exchange to any person or persons. And that your orator may have such further and other relief in the premises as to your honors shall seem meet and the nature of this case may require. May it please, &c. [See forms No. 1, and 4, p. 6.] *Pray subpoena and injunction against T. O. G. T. W. C. W. B. B. W. B. and J. J.*

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**\*\*XIII.** *Bill by a trader who had compounded with his creditors, against two creditors who executed the deed of composition, and had fraudulently gained an advantage over the other creditors, by compelling the plaintiff previously to give them his promissory note for securing an additional payment of 1000l. ; one moiety of which the plaintiff paid, and gave a bill of exchange for the remaining moiety, which, not being paid, the two creditors proceeded by process of foreign attachment in the Lord Mayor's Court, to attach a sum of money belonging to the plaintiff in the hands of a third person. The prayer is to have the bill of exchange cancelled, and for an injunction to restrain the two creditors from proceeding in the attachment and from negotiating the bill of exchange, and also to restrain the garnishee from paying over the moneys in his hands. (2) The observations of the learned counsel who drew the bill are added at the conclusion, p. 41.*

[ \*34 ]

To the Right Honorable John Earl of Eldon  
Lord High Chancellor of Great Britain.

Humbly complaining sheweth unto your lordship your orator T.

(2) Where a creditor apparently accepts and gives a receipt for a composition, in order to enable the debtor to deceive his other creditors, but takes security for the rest of his demand, or if he takes additional security for the amount of his composition, such security is void. If a creditor's conduct is such as has a natural tendency to induce the other creditors to believe that all are acting upon equal terms and receiving equal shares, as they may be influenced by that appearance, any private agreement for greater benefit to one is a fraud upon the rest, and therefore void. *Fawcett v. Gee*, 3 Anstr. 910; and see *Cecil v. Plaistow*, 1 Anstr. 202; *Middleton v. Lord Onslow*, 1 P. Wms. 768; *Leicester v. Rose*, 4 East, 372; *Saddler and Jackson, Ex parte*, 15 Ves. 55, 2d edit. If a creditor acts upon an agreement for a composition, he is as much bound as if he had signed the deed. S. C. 15 Ves. 56. In the case of *Small v. Brackley*, 2 Vern. 602, where the plaintiff had compounded with his creditors, and had been guilty of a gross fraud and breach of trust towards the defendant a creditor against whom he had filed his bill to be relieved against an underhand agreement for securing to her a larger composition, the Lord Chancellor upon appeal, refused the plaintiff relief.

Plaintiff unable to pay his debts in full. The creditors granted license to him to conduct his affairs under the superintendence of inspectors.

W. F. and H. F. defendants, creditors of the plaintiff, who executed the deed.

[ \*35 ]

Plaintiff conducted his business under the control of the inspectors.

Dividends to the amount of 5s. in the pound paid by the inspectors.

Plaintiff applied to his creditors to accept 10s. in the pound, who all consented if the defendants W. F. and H. F. would agree thereto.

Upon being applied to, the defendants W. F. and H. F. proposed to execute any deed whereby they should appear to accept 10s. in the pound upon having an additional

H. of, &c. That in and for some years before the year 1816 your orator carried on trade as a capillaire manufacturer in, &c. And that in the said year 1816 your orator had become and was indebted to divers persons in several sums of money which he was unable to pay in full. And that by an indenture bearing date the — day of — in the said year 1816 and made between your orator of the first part, T. J. R. T. M. and G. R. of the second part, and the several other persons creditors of your orator who executed the said deed of the third part, it was witnessed that the several creditors of your orator who were parties to the said indenture of the second and third parts granted license to your orator to manage and conduct his business affairs and concerns under the inspection of the said parties thereto of the second part. And that the moneys and securities for money to be received in such business should be paid and applied in manner therein mentioned for the benefit of the said creditors. And your orator further sheweth unto your lordship that in and before the said year 1816 W. F. and H. F. two of the defendants thereto carried on the business of — in partnership together under the style or firm of F. and Co. And that in the \*said month of — 1816 the said W. F. and H. F. were creditors of your orator for the sum of £8854 11s. 8d. in respect of which they duly signed and executed the said indenture as parties thereto of the third part. And that the said indenture was in like manner executed by all the other creditors of your orator. And that your orator carried on managed and conducted his said business under the control and direction of the said inspectors. And that in pursuance of the provisions contained in the said indenture dividends were paid by the said inspectors by and out of the moneys arising out of the said business to your orator's creditors to the amount altogether of 5s. in the pound upon their respective debts. And that your orator finding that he could not by his utmost exertions enable himself to pay all his said creditors the full amount of their respective debts applied to and requested his said creditors to accept and take the sum of 10s. in the pound (inclusive of the dividend already received by them) upon their respective debts in full discharge of the same debts respectively. And that all the other creditors were willing to comply with the said requests if the said W. F. and H. F. would also comply therewith. And the said W. F. and H. F. upon being applied to by your orator as aforesaid offered and proposed to execute any deed whereby they should appear to accept the said composition of 10s. in the pound in full discharge of their debts and to release your orator from such debts on the payment of such composition provided your orator would in the first place secure them an additional payment of £1000 by giving them a promissory note for that sum. And your orator further sheweth that your orator was in very embarrassed circumstances and altogether unable to pay his creditors in full and unable to prevail on his other creditors to accept the said composition without making it appear that said W. F. and H. F. also accepted the same. And that your orator was apprehensive that an engagement to pay the sum of £1000 to the said W. F. and H. F. would make him less able

to pay the composition to the other creditors and therefore endeavored to prevail on the said W. F. and H. F. to accept the said composition in common with the said other creditors but that the said W. F. and H. F. still required your orator to give the said promissory note and positively refused to accept the said composition on any other terms, and on the — day of — 1819 wrote and sent a letter to S. A. which is in the words or to the effect following (that is to say:) [*Offering to execute the deed on plaintiff's delivering his note for £1000, and the composition notes as agreed upon, and requesting to know if Mr. A. was authorized to complete the arrangement.*] And your orator further sheweth that the said promissory note was then or soon afterwards delivered unto the said defendants who at the same time promised that they would not enforce payment of the said promissory note until your orator had paid the full amount of the said composition to all his other creditors; and that under such circumstances your orator was prevailed upon to make and deliver and he did accordingly make and deliver to the said W. F. and H. F. his promissory note for £1000 and interest and that thereupon the said W. F. and H. F. executed the indenture which is hereinafter mentioned to bear date the — day of — 1819. And your orator \*further sheweth that notwithstanding the matters last aforesaid the said W. F. and H. F. gave out and represented to the other creditors of your orator that they had agreed to accept the said composition and that in consequence thereof the said other creditors agreed to accept the same, and that thereupon a certain indenture bearing date the said — day of — 1819 and made between your orator of the first part, the said T. J. R. T. M. and G. R. of the second part, and the several other persons whose names and seals were thereunto subscribed and affixed by themselves or their respective attorneys agents or partners and being respectively creditors of your orator of the third part, was executed by your orator and all his creditors and amongst others by the said W. F. and H. F. and that thereby after reciting amongst other things to the effect that all your orator's creditors having investigated your orator's accounts and ascertained the truth and fairness of his statement had fully agreed to accept the sum of 10s. in the pound (inclusive of the dividend already received by them upon their respective debts in full discharge of the same debts respectively, and that it hath been agreed that the said further payment of 5s. should be paid as follows (that is to say;) 2s. in the pound to the said creditors on their respectively executing the said deed, 2s. in the pound in nine months after the execution thereof, and the remaining 1s. in the pound in fifteen months after the execution thereof, and that your orator had accordingly paid the said 2s. in the pound agreed to be paid on the execution of the said indenture and had given his promissory note for the payment of the remaining 3s. in the pound at the times aforesaid, It was witnessed that your orator covenanted to pay to the said creditors respectively the said remaining 3s. in the pound at the respective times therein mentioned. And it was further witnessed that for and in consideration of your orator having paid unto all and every of his said creditors parties to the said indenture

payment of 1000*l.* secured to them.

The circumstances under which plaintiff gave them his promissory note for 1000*l.*

[\*36]

Representations by W. F. and H. F. to the other creditors that they had agreed to accept the composition. Indenture of release executed.

Recital of agreement to accept 10s. in the pound inclusive of the 5s. already paid, the remainder to be paid by three instalments.

at or upon their execution thereof the sum of 2s. in the pound upon the said respective debts as aforesaid in addition to the dividend of 5s. in the pound before paid to them under the provisions of the said indenture of the — day of — 1816 the payment and receipt whereof they the said several creditors thereby respectively acknowledged, and also in consideration of the remaining sum of 3s. in the pound upon their said respective debts the balance of the aforesaid composition thereinbefore by your orator covenanted to be paid to them respectively or to their respective executors or administrators by the instalments at the times and in the manner thereinbefore mentioned in full satisfaction and discharge of the said several debts, all and every the several creditors of your orator who by themselves or other persons duly authorized by them had signed sealed and executed the now stating indenture did and each of them did as well for himself respectively as for his and her respective executors and administrators and also for his and her respective partner and partners in trade (subject nevertheless to the proviso therein and herein mentioned) remise release and forever quit claim unto your orator his executors and administrators all and all manner of actions suit and suits cause and causes of action or suit bills bonds writings \*obligatory debts dues accounts reckonings sum and sums of money judgments executions extents quarrels covenants contracts controversies trespasses trusts and all breaches thereof claims and demands whatsoever both at law and in equity or otherwise howsoever which against your orator his executors or administrators they the said creditors or any of them or their or any of their executors or administrators then had or thereafter could should or might have claim challenge or demand for or by reason or means of all and every or any of the debts then due and owing to them respectively from or by your orator or of any interest exchange or commission due or demandable for the same or of any other cause matter or thing whatsoever from the beginning of the world up to the day of the date of the now stating indenture. And the said several creditors of your orator parties to the now stating indenture who by themselves or other persons duly authorized by them respectively in that behalf had executed the now stating indenture did thereby for themselves severally and respectively and for their several and respective heirs executors and administrators and also for their several and respective partner and partners in trade but not one of them for the other or others of them or for the acts or deeds of the partner or partners of the others of them respectively but each and every of them for himself and herself and for his and her own acts and deeds executors and administrators and for the acts and deeds of his and her own partner or partners only did thereby covenant promise and agree with and to your orator his executors and administrators, that they the said several creditors of your orator parties to the now stating indenture or their respective partner or partners in trade or the heirs executors administrators or assigns of them or of their respective partners or any of them should not nor would at any time, or times thereafter commence or prosecute any action or actions suit or suits at law or in equity or institute any other process or proceeding against your

Release to the  
plaintiff.

[ \*37 ]

orator his heirs executors or administrators or make any attachment of or upon his or their estate or effects for or by reason of any debt or debts then due and owing by your orator to them or any of them. And in case any of them the said creditors parties thereto or their or any of their heirs executors administrators or assigns or any partner or partners in trade of them or any of them or the heirs executors administrators or assigns of any such partner or partners should commence or prosecute any such action attachment or proceeding contrary to the true intent and meaning of the now stating indenture that then and in such case your orator his heirs executors or administrators should and might plead the now stating indenture as a general release in bar of every such action suit attachment or other proceeding and which should so operate and be construed and taken accordingly: Provided always nevertheless and the now stating indenture (so far as the same related to the general release thereinbefore contained) was upon this express condition that your orator his executors or administrators did and should well and truly pay or cause to be paid unto his said several creditors parties to the said indenture or to their respective executors or administrators the said remaining sum \*of 3s. in the pound (the balance of the aforesaid composition) upon their said several and respective debts so due and owing to them respectively from and by your orator as aforesaid by instalments at the times and in the manner thereinbefore expressed in that behalf according to the covenant thereinbefore contained for that purpose and the true intent and meaning of the now stating indenture. As in and by the said last-mentioned indenture reference being thereunto had when produced will appear. And your orator further sheweth unto your lordship that at the time of the execution of the said indenture your orator duly paid to all his creditors who executed the same the sum of 2s. in the pound upon their respective debts and that your orator afterwards paid the said W. F. and H. F. and to all his other creditors who executed the said indenture (except J. L. and G. J. P. who executed the same as creditors of your orator in trust for your orator's wife under a settlement the remaining sum of 3s. in the pound as covenanted by your orator in the said indenture.) And that upon such payment your orator became entitled to the benefit of the said release but that nevertheless the said W. F. and H. F. in or about the — day of — 1819 called upon and required your orator to pay the said promissory note for £1000, and your orator being unable to pay the whole thereof and being unaware that the said promissory note was void and of no effect as having been given to the said W. F. and H. F. in preference to the other creditors of your orator who executed the said indenture, consented to pay and did pay and allow in account the sum of £500 being one moiety of the sum for which the said promissory note was given together with the interest on the said sum of £1000, and that your orator at the same time accepted a bill of exchange which was drawn by the said W. F. and H. F. on your orator for the sum of £500 (the remainder of the said sum of £1000) which was made payable at three months after date and which hath from time to time been renewed. And that thereupon the said W. F. and H. F. cancelled

[ \*38 ]

Payment of the three instalments to all the creditors except the trustees of plaintiff's marriage settlement.

W. F. and H. F. require payment of the 1000l. note.

500l. part thereof allowed by plaintiff in account with the interest due, and a new bill of exchange given by plaintiff for the remaining 500l.

In consequence of the payment of the 500*l*. plaintiff was unable to pay the instalments to the trustees of his marriage settlement, but having collected 287*l*. in the hands of H. M. with the intention of paying the same to the

[ \*39 ]

trustees, defendants W. F. and H. F. have attached the 287*l*. in the Lord Mayor's Court.

The promissory note for 1000*l*. obtained by fraud.

Plaintiff unable to resist the demand at law.

Applications to W. F. and H. F. to repay them 500*l*. and to stay proceedings on the attachment.

the said promissory note for £1000 and they at the same time promised and agreed that they would not call upon your orator for payment of the said bill of exchange for £500 but that the same should be renewed from time to time with interest till the said trustees for your orator's wife and all other your orator's creditors had received the full amount of the said composition. And your orator further sheweth unto your lordship that in consequence of being compelled to pay the said sum of £500 and such interest as aforesaid to the said W. F. and H. F. your orator was unable to pay the said composition to the said trustees for your orator's wife at the times limited by the said indenture and when the said other creditors were paid but that your orator lately collected the sum of £287 11*s*. 9*d*. which was in the hands of H. M. (another defendant hereto) in the city of London. And your orator intended to pay the same to the said trustees in part satisfaction of the instalments which have for a considerable time been due to them in respect of the said composition. But that the said W. F. and H. F. have lately proceeded by process of foreign attachment under an action brought by them in the court of the Lord Mayor of the city of London against \*the said H. M. to attach the money belonging to your orator in his hands. And the said H. F. hath alleged that your orator is indebted to him and the said W. F. in the sum of £541 19*s*. on the said bill of exchange, and the said W. F. and H. F. threaten and intend to proceed upon the said attachment to compel the said H. M. to pay the said sum of £287 11*s*. 9*d*. to them in part satisfaction of the said alleged debt, and the said H. M. intends to pay the same to them accordingly. And your orator further sheweth that the sum of £541 19*s*. is the amount principal and interest of the said bill of exchange which was accepted by your orator as aforesaid for the said sum of £500 part of the sum of £1000 for which your orator gave the said promissory note as aforesaid; and that such promissory note was obtained from your orator by fraud and was not valid, and that the said bill of exchange was accepted by your orator under the circumstances aforesaid in respect of a debt due from him to the said W. H. and H. F. before the execution of the said indenture of the — day of — 1819 and not in respect of any debt subsequently incurred, and that the said W. F. and H. F. having released your orator as aforesaid ought not now to be permitted to proceed against your orator or his effects for the recovery of the said debt, but that by reason of the said bill of exchange being dated after the said release your orator is unable to avail himself at law of the said release to resist the demand of the said W. F. and H. F. upon the said bill of exchange, or to prove that the said bill of exchange was accepted by your orator on account of a debt which was due before the said release was executed and which was covered thereby. And your orator being advised that the said W. F. and H. F. having executed the said indenture and thereby agreed to accept the said composition had no right to claim any other debt then due to him, and that the said sum of £500 and such interest as aforesaid were erroneously paid, hath requested them to repay the sum of £500 and interest and to cease their proceeding on the

said attachment and to deliver up the said bill of exchange for the principal sum of £500 and the interest added thereto to be cancelled, and your orator hath also requested the said H. M. not to pay over the said sum of £287 11s. 9d. now in his hands as aforesaid, and your orator was in hopes that his said requests would have been complied with as ought to have been the case. But that the said W. F. and H. F. acting in concert with the said H. M. and other persons unknown to your orator refuses to comply with such requests and the said W. F. and H. F. pretend that the said bill of exchange was accepted for a new and valuable consideration arising since the said release was executed. Whereas your orator charges the contrary and that the said principal sum of £500 for which the said bill of exchange was given to which the interest hath been added was part of the said sum of £1000 which the said W. F. and H. F. stipulated for at the time when they executed the said indenture and thereby agreed to release your orator on payment of the said composition, and that so the truth would appear to be if the said defendants would as they ought to do set forth a full true and particular account of the circumstances and consideration for which your orator \*accepted the said bill of exchange and gave the said promissory note, but which they refuse to do. And under the circumstances aforesaid your orator charges that the said W. F. and H. F. ought to be restrained from proceeding on the said attachment to enforce payment of the money belonging to your orator in the hands of the said H. M. and that the said H. M. ought to be restrained from paying over such money to the said W. F. and H. F. But at other times the said W. F. and H. F. threaten and intend to negotiate or part with the said bill of exchange or place the same in the hands of some third person who may sue your orator for the money thereby purported to be made payable. And your orator charges that they ought to be restrained from so doing. In consideration whereof and forasmuch as your orator can only have adequate relief in the premises in a court of equity where matters of this nature are properly cognizable and relievable. To THE END therefore, that &c. [*see form VI. p. 5, interrogating to the stating part and proceed thus:*] And whether your orator hath not and when made or caused to be made such applications and requests as aforesaid or some and what other applications and requests to the said defendants or to some or one and which of them; And whether they or some or one and which of them have or hath not refused to comply therewith and why; And whether the said principal sum of £500 for which the said bill of exchange was given was not part of the said sum of £1000 which the said W. F. and H. F. or one and which of them stipulated for at the time when they executed the said indenture and thereby agreed to release your orator on payment of the said composition or how otherwise; And that the said defendants W. F. and H. F. may set forth a full true and particular account of the circumstances and consideration for which your orator gave the said promissory note and accepted the said bill and bills of exchange respectively and of what particular or particulars such consideration and each and every part thereof consisted; And whether the only

Applications  
to H. M. not to  
pay the 287l.

## IV.

Refusals.

Pretence that  
the bill of ex-  
change was  
given for a  
new conside-  
ration.

Charge the  
contrary to be  
true.

[ \*40 ]

Defendants  
intend to ne-  
gotiate the  
bill.

Interrogato-  
ries.

Prayer. real and *bona fide* valuable consideration for the same did not consist of a debt owing to the said defendants by your orator before the date and execution of the said indenture of release; And that the said defendants may answer and set forth Whether the said W. F. and H. F. or one and which of them ought not to be restrained from proceeding on the said attachment to enforce payment of the money belonging to your orator in the hands of the said defendant H. M. or any and what part thereof or how otherwise, and if not why not; And whether the said defendant H. M. ought not to be restrained from paying over such money or any and what part thereof to the said defendants W. F. and H. F. or either and which of them or how otherwise, and if not why not; And whether the said defendants ought not to be restrained from negotiating or parting with the said bill and bills of exchange, and if not why not. And that upon a full and perfect discovery of the matters aforesaid the said bill and bills of exchange may be delivered up to be cancelled; and that the said defendants W. F. and H. F. may be restrained by the order and injunction of this court from any further proceedings on the said foreign attachment against the said H. M. to recover pay-  
 [ \*41 ] \*ment of the said sum of £287 11s. 9d. belonging to your orator as aforesaid, and from commencing any action or proceeding at law against your orator touching or concerning the matters aforesaid or any of them; and that the said H. M. may be restrained from paying over the said sum of £287 11s. 9d. or any part thereof to the said W. F. and H. F. or either of them; and that the said defendants W. F. and H. F. may be in like manner restrained from negotiating or parting with the said bill of exchange; and that your orator may have such further and other relief in the premises as the nature and circumstances of this case may require and to your lordship shall seem meet. May it please your lordship, &c. [*see forms No. 1, and 4, page 6.*] *Pray subpoena and injunction against W. W. H. F. and H. M.*

*Observations on the above bill by the learned counsel who drew it :*

The defendants will not be restrained by the common injunction from proceeding on the attachment against Mr. M. the garnishee. It will be necessary to make a special motion on the answer or on affidavit after the time for answering is out, and under all the circumstances it is far from clear that the injunction can be had at all.

If the facts can be proved the defence is good at law, and Mr. H. should avail himself of it.



XIV. *Bill to have a bond and other securities cancelled, which the plaintiff in order to procure his discharge from an arrest had executed to the defendant in lieu of former securities given for money won at play; (3) praying also for an injunction to restrain the defendant from proceeding at law, and from entering up judgment on a warrant of attorney.*

The plaintiff C. some time in or about, &c. was in company with T. B. of, &c., the defendant hereto at the house of one Mr. D. in, &c. and dice being introduced plaintiff sat down to play with dice with the defendant, and thereupon the defendant at such meeting won of plaintiff by playing at dice the sum of £——, and plaintiff being afterwards and in or about, &c. indebted to the said defendant in a sum of money for clothes which the defendant had made for plaintiff \*and another person at the instance and request of plaintiff, and the said defendant having satisfied and discharged the debt and costs incurred in an action at law in which he had been bail jointly with plaintiff, defendant caused plaintiff to be arrested, and held to bail in an action at law for recovery of the money due to him as aforesaid for clothes, and plaintiff being at that time unable to pay or to advance the same, defendant proposed and offered to drop the said suit, and to discharge the said arrest in case plaintiff would enter into and execute a bond or obligation to him the defendant conditioned for the payment as well of the said sum of £—— won by him at dice as aforesaid, as also of his said other demands amounting to the sum of £—— in the whole; and accordingly plaintiff was prevailed upon to execute, and did actually execute a bond or obligation bearing date, &c. conditioned for the payment to the defendant of the sum of £—— by instalments at the several days and in manner therein mentioned.

[ \*42 ]

That part of the consideration of the same bond or obligation was the said sum of £—— won by the said defendant of plaintiff by playing at dice as aforesaid.

That on or about, &c. last, defendant applied to plaintiff and proposed to deliver up the said bond for ——l. upon plaintiff's entering into and executing in lieu thereof a new bond or obligation to the said defendant in the penalty of ——l. conditioned for the payment of the said sum of ——l. by instalments at two equal payments, and

(3) Where the plaintiff had given a bond for money lost at play, and afterwards paid part of the amount, the Court ordered the money to be repaid, and granted relief against the bond. *Rawdon v. Shadwell*, Ambl. 269; sed vide *Bosanquet and Dashwood*, Ca. temp. Talbot, p. 41. In the case of *Graves v. Houlditch*, 2 Price, 147, where the plaintiff had suffered judgment to go by default in an action on a bill accepted by him in favor of the defendants, upon their giving up a former bill of exchange indorsed by the plaintiff, and which had been accepted in consideration of a gambling debt, the Court refused a motion for an injunction, as the plaintiff might have had the same defence at law on the second as on the first bill, if he had not suffered judgment to go by default.

The right given to the loser by the 9th Anne, c. 14, to sue for money lost at play is a vested interest, and passes upon his bankruptcy to the assignees. *Brandon v. Sands*, 2 Ves. jun. 514.

also a warrant of attorney to confess judgment thereon, and upon plaintiff's giving and subscribing two promissory notes for the payment of —l. each, the one due at Christmas next and the other at Christmas in the year — and also another promissory note for the payment of —l. for the interest thereof, and thereupon plaintiff at the entreaty of the defendant did execute to him a bond or obligation bearing date, &c. in the penalty of —l. or some other considerable sum of money, with condition thereunder written for the payment to defendant of the sum of —l. with interest at the end of two months from the date thereof, and of the further sum of —l. and interest at the end of five months from the date of the same. And plaintiff also at the same time executed a warrant of attorney to confess judgment in his Majesty's Court of K. B. at W. on the last-mentioned bond; and plaintiff also then gave and subscribed to the defendant a promissory note for the payment of the further sum of —l. at Christmas next, and another promissory note for the payment of the further sum of —l. at Christmas in the ensuing year, and also a promissory note for the payment of —l. on account of interest of the said sums. As by, &c.

That the last-mentioned bond, warrant of attorney and promissory notes were entered into and executed by plaintiff, in lieu of the first mentioned bond for the payment of the sum of —l., and without any other consideration paid or given to plaintiff by the defendant, save the delivering up of the same bond for —l.

[ \*43 ]

That soon after the first payment on the said bond for —l. became due, he the said defendant entered up judgment on the same bond in pursuance of the said warrant of attorney, in the \*court of K. B. and on or about, &c. defendant sued out a writ of *capias ad satisfaciendum* on the said judgment, and plaintiff was taken in execution thereon for the penalty of the said bond being the sum of —l., and plaintiff being in custody of the said execution, defendant on the day following offered and agreed to release plaintiff from the said execution, if plaintiff would draw a bill of exchange on T. B. junior esq. for the sum of —l. then due upon the said bond payable in fourteen days, and procure him the said T. B. to accept the same bill; and if plaintiff and the said T. B. would also enter into and execute a warrant of attorney to confess judgment for the sum of —l., to which plaintiff in order to procure his discharge out of custody consented, and accordingly plaintiff drew a bill of exchange on the said T. B. requiring him to pay to the defendant or order the sum of —l. after fourteen days from the date thereof, being the first payment which had become due on the said bond for —l., and plaintiff together with the said T. B. at the same time entered into and executed a warrant of attorney to confess judgment in his Majesty's Court of K. B. to the said defendant in the sum of —l., and the said defendant or J. D. his attorney subscribed an acknowledgment that the same was given as a security for the payment of the said bill of exchange, and that judgment was not to be entered upon the said warrant of attorney until the said bill became complete. As by, &c.

The plaintiff is advised that the securities given and entered into

by plaintiff as aforesaid are all null and void, and ought to be delivered up to plaintiff and cancelled and vacated, the consideration for the same being to secure the sum of ———l. so won by defendant at playing at dice as aforesaid; and plaintiff hath frequently applied to the defendant and requested him to deliver up the several securities as aforesaid so entered into by plaintiff as aforesaid; and plaintiff well hoped, &c. BUT NOW SO IT IS, &c. [see form IV. p. 5.] The said defendant insists upon the benefits of all the aforesaid securities, and threatens in case the said bill of exchange is not paid on the day the same is made payable that he will enter up judgment on the said warrant of attorney so executed by plaintiff and the said T. B. and sue out execution thereon; and that he will also commence actions against plaintiff on the several other securities given and entered into by plaintiff as aforesaid to recover the moneys mentioned therein respectively, sometimes pretending that all the securities were given for a good and valuable consideration *bona fide* paid by defendant to plaintiff, and that no part of the consideration thereof was for money won at dice or any other play.

*Charge* the contrary to be true, which defendant at times admits, but

*Pretends* that although part of the consideration of the first mentioned bond was for the sum of ——— guineas won by him at dice as aforesaid, yet as such bond was afterwards delivered up to plaintiff and such new securities entered into by him as aforesaid in lieu of the former, the said bond for £—— and warrant of attorney to confess judgment thereon, and also the said promissory notes given by plaintiff were to be considered as distinct and independent securities \*and given for a good and valuable consideration, and are not void within the meaning of the stat. 9 Ann. c. 14, and therefore that the defendant hath a right to the benefit thereof, and to receive the money mentioned therein.

[ \*44 ]

*Charge* that the said bond for ———l. and the warrant of attorney to confess judgment thereon, and also the said promissory notes were given, as the fact is, by plaintiff in lieu of the first-mentioned bond, and for no other or different consideration, that they are equally null and void, and ought not to be put in force against plaintiff, part of the consideration for the same being the money won by defendant of plaintiff at playing with dice as aforesaid. All which actings, &c. [see form VI. p. 6, *interrogating to the stating and charging parts.*]

That the said bond so executed by plaintiff to the said defendant for the payment of the said sum of ———l. and the said warrant of attorney to confess judgment thereon; and also the said promissory notes so given and entered into by plaintiff to the said defendant, and all other the securities entered into and executed by plaintiff to the said defendant in manner and for the consideration aforesaid, may be declared null and void, and that the same may be delivered up to plaintiff to be cancelled. And that in the mean time the said defendant may be restrained by the order and injunction of this honorable court from commencing or prosecuting any action or actions at law against plaintiff upon the said securities or any of them,

and also from entering up judgment on the said warrant of attorney executed by plaintiff and the said T. B. or from commencing any proceedings thereon. [*And for further relief, see form VIII. p. 5.*] May it please, &c. [*see forms No. 1, and 4, p. 6.*]

J. R.

[ \*45 ] \*\*XV. *Bill by two merchants, partners, against several merchants, partners in different firms, who had formed a special partnership together for dealing in spelter, and having purchased or contracted for all the Silesia spelter which could be furnished from the mines during the year, afterwards by their brokers, (who concealed the names of their principals) entered into several contracts with the plaintiffs and many other persons, for the purchase and delivery of Silesia spelter at various times when none could be procured except from the defendants or their agents, and at very exorbitant prices. Charging that the defendants caused some small quantities to be bought and sold by their agents, for the purpose of obtaining a statement of artificial prices;—the brokers are made parties defendants, being charged with having participated in the profits, and as having an interest in the contracts entered into with the plaintiffs:—The prayer is, that the contracts entered into with the plaintiffs may be declared to have been obtained by fraud, and may be delivered up to be cancelled,—for an injunction to restrain proceedings at law, and that the defendants may pay the costs of the suit.*

In the exchequer.

To, &c.

Humbly complaining show unto your honors your orators X. Z. of, &c. and Y. Z. of, &c. debtors and accountants, &c. [*see form No. 2, p. 2.*] That a certain mineral substance called spelter is and for some years past has been produced from the mines of S. and has for about seven years last past been sent in considerable quantities to this country for the purpose of being afterwards exported to I. and sold there for consumption, and that the quantity of spelter annually produced from the said mines is limited, and the amount thereof has not usually exceeded — tons or thereabouts in each year, and the quantity imported into this country and afterwards exported to I. has usually amounted to — tons or thereabouts in each year, and the price thereof in this country has for some years past ranged from about 20*l.* or thereabouts to 24*l.* or thereabouts per ton, and except on one occasion when the importation was prevented by frost and thereby the price was raised to 30*l.* per ton or thereabouts, the price has not till within the last year and in consequence of the circumstances herein stated on any occasion exceeded the said sum of 24*l.* per ton, and that the said quantity usually produced in each year

That spelter is produced from certain mines in limited quantities annually, and not usually exceeding a certain price.

from the said mines as aforesaid and the said price thereof hath been and is well known to all persons dealing in spelter, and particularly to the Defendants hereinafter named. And your orators further show unto your honors that in the beginning of the year — and long previously to that time, A. B. and C. D. two of the defendants hereto carried on business in the city of L. in partnership together under the firm of —, and that during the same time E. F. and G. H. two other defendants hereto carried on business in L. in partnership \*together under the firm of —, and that during the same time I. K. and L. M. two other defendants hereto carried on business as merchants in the city of L. in partnership together under the firm of —, and that the said three firms had respectively considerable mercantile dealings with persons residing in I., and the said I. K. and L. M. had been and were in the habit of purchasing spelter in this country and of exporting the same to I. for sale and consumption there; And that in or about the beginning of the year — the said defendants A. B. C. D. E. F. G. H. I. K. and L. M. well knowing as the fact is that the market in I. was overstocked with spelter and consequently that it was difficult to obtain good prices for spelter in this country and that persons in the habit of dealing in spelter would be glad to enter into contracts for the sale thereof if good prices were offered, formed a special partnership together for dealing in spelter, and they concerted a scheme to raise money by forestalling and secretly engrossing or contracting for all the spelter which could be found or contracted for, and after they had entered into contracts for the delivery of such spelter to themselves at early periods, fraudulently entering into other contracts for the purchase of large quantities of spelter to be delivered to themselves at later periods from persons who could only obtain the same from them or persons employed by them and at such prices as they should dictate, and that in pursuance of such scheme the said several persons who are defendants hereto by themselves or their brokers or agents some time before the month of May — covertly employed several persons in this country and also in S. H. and other places abroad, to purchase all the Silesia spelter which could be obtained or contracted for at prices which according to the usual rates were good prices, and that accordingly such spelter to the full amount of all that could be produced from the mines of S. during the year — was purchased by or on the behalf of the said defendants, and none or very little could be found in the market or obtained in this country otherwise than from the said defendants, or persons who were covertly employed by them and acted in an under-hand manner as their agents or on their behalf; and that the said defendants A. B. C. D. E. F. G. H. I. K. and L. M. having by such means as aforesaid engrossed or contracted for all the spelter which could be found or contracted for in S. or in H. or this country and elsewhere, in further pursuance of the said scheme employed A. M. and T. M. who carry on business together as brokers under the firm of M. and Co. and who are also defendants hereto, as their brokers to contract for the purchase of spelter on their behalf from a great many merchants and others in this country, and in such contracts it was to be stipulated that the spelter comprised therein was to

That certain of the defendants carried on business under three different firms.

[ \*46 ]

That the three firms were in the habit of purchasing spelter and exporting the same, and that they formed a special partnership together for dealing in spelter, and concerted a scheme to raise money by secretly forestalling all the quantity which could be procured.

Accordingly the defendants employed agents in England and abroad to purchase all the Silesia spelter which could be obtained.

And afterwards employed two of the defendants, brokers, to contract with merchants in England for the purchase and delivery of spelter at

times when none could be obtained except at prices dictated by the defendants.

[ \*47 ]

First contract with the plaintiffs.

Second contract with the plaintiffs.

be delivered to the buyers in and after the month of August —, and at times when it was well known to the said defendants that after such practices as aforesaid such spelter could not be obtained in the usual course of mercantile dealings, and that if the same could be obtained at all it could only be from persons who held the same for or on the behalf of the said defendants and at prices dictated by them. And your orators further show unto your honors that accordingly the said M. and Co., by the directions of the said other defendants and on their behalf but without disclosing their names, applied to a great number of persons who were entirely ignorant of the several matters aforesaid, and entered into very many contracts with such persons for the purchase of Silesia spelter which could not be obtained otherwise than as aforesaid, and such contracts were entered into not for the purpose of having the same properly fulfilled in a fair mercantile course of dealing, but with the view and design of fraudulently compelling the persons who had contracted to sell Silesia spelter to purchase the same at a most exorbitant price from the said defendants or their agents, or pay differences of large amount to the said defendants. And your orators further show unto your honors that on or about the 6th day of May — the said M. and Co. as the brokers or agents of the said other defendants but without disclosing their names applied to your orators and proposed to purchase from them — tons of Silesia spelter at £24 a ton to be delivered from the 1st to the 31st day of August then next, and — other tons of Silesia spelter at £23 10s. a ton to be delivered from the 15th day of October to the 30th day of November then next, and that your orators being entirely ignorant of the matters aforesaid and conceiving that they were dealing with the said M. and Co. in the fair and usual course of trade and that they should be able in the usual course of trade and at the usual prices to procure and deliver the quantity of Silesia spelter proposed to be purchased as aforesaid agreed to sell the same, and that thereupon the said M. and Co. wrote and sent to your orators two brokers' letters contracts or sale notes, one of which was in the words and figures and to the effect following (that is to say): "London 6th May — Messrs. Z. gent. We have sold for your account to our principals at £24 per ton, — tons of good merchantable Silesia spelter, which quantity of spelter is to be delivered and received from a landing scale or warehouse (in your option) within the port of L. not sooner than the 1st nor later than the 31st day of August next to be paid for in cash without discount within fourteen days from the date of delivery; should any dispute arise on this contract the same to be settled by arbitration. We are gents. your faithful and obedient servants M. and Co. brokers;" — And the other of which letters or contracts was in the like words and figures, save that the — tons of spelter therein mentioned were stated to be sold at the price of £23 10s. per ton and the same were agreed to be delivered not sooner than the 15th day of October nor later than the 30th day of November then next; and that on or about the 9th day of May — the said M. and Co. acting as aforesaid by the direction and on the behalf of the said other defendants but without disclosing their names proposed to your orators

to purchase for their principals — other tons of spelter at the price of £24 per ton to be delivered not sooner than the 15th day of October nor later than the 30th day of November then next, and that your orators in like manner and under the circumstances aforesaid contracted to sell such other — tons of Silesia spelter at such times and at such price as aforesaid. And your orators further show unto your honors that your orators were entirely ignorant who were the principals on whose behalf the said contracts were entered into, but that your orators having entered into the said contracts and being desirous to fulfil the same wrote to their correspondents at H. to \*purchase Silesia spelter in order to the fulfilment of the said contracts, and that your orators soon afterwards discovered, as the fact is, that all the spelter produced or likely within the year — to be produced from the mines of I. and which had been usually supplied to the markets at H. and elsewhere had been forestalled and already contracted for, and that no Silesia spelter could be obtained except at very exorbitant and extravagant prices, and that such exorbitant prices arose from the whole of the Silesia spelter which would otherwise have been in the market having been engrossed by some persons who were at that time unknown to your orators, but who refused to sell the same otherwise than at prices dictated by themselves. And your orators further show unto your honors that your orators being under the circumstances aforesaid wholly unable to procure spelter for the fulfilment of their said contracts otherwise than at very great loss, and being desirous to communicate in respect thereof with the principals on whose behalf the same had been entered into, applied to the said M. and Co. for the names of such principals, whereupon the said M. and Co. to the great surprise of your orators refused to inform your orators who the said principals were and at the same time stated that it was immaterial to your orators who the principals were for that the money would be ready and the spelter would be expected to be delivered at the times contracted for or to that effect. And your orators further show unto your honors that your orators discovered and the fact is that the said M. and Co. as brokers for principals whose names were not disclosed had entered into a great many contracts with many other persons for the like purchase of Silesia spelter to be delivered at or about the same times with the spelter comprised in the said contracts with your orators, and that such other persons had been for the reasons aforesaid unable to complete their contracts, and were called upon to pay differences computed upon the exorbitant price to which Silesia spelter had been raised as aforesaid; and that under the circumstances aforesaid and being unable to obtain the names of the principals in the said contracts, your orators conceived that the same had been entered into in pursuance of a fraudulent scheme and did for that reason inform the said M. and Co. that they did not conceive themselves bound by the said contracts. And your orators further show unto your honors that they have since discovered, and the fact is, that the said defendants A. B. C. D. E. F. G. H. I. K. and L. M. were the principals on whose behalf the said contracts were entered into by the said M. and Co., and were the persons

Plaintiffs were ignorant who were the principals on whose behalf the contracts

[ \*48 ]

were entered into, and in order to fulfil their contracts, wrote to their agents to purchase Silesia spelter, when they discovered that the whole quantity which could be supplied from the mines had been forestalled.

Plaintiffs applied to the brokers for the names of their principals, which they refused to discover.

Plaintiffs discovered that the brokers had entered into many other similar contracts,

and refused to perform their contracts. Plaintiffs have since discovered that the defendants A. B. &c., are the principals,

and charge them with having practised a gross fraud.

[ \*49 ]

Applications to the defendants to deliver up the contracts.

IV.

Defendants refuse to comply and pretend that the contracts were fairly entered into.

Charge the contrary, and that they formed a special partnership, the terms of which were reduced into writing.

That the brokers were the principal acting parties in forming such scheme.

That defendants fraudulently agreed to forestall all the spelter in the market, and employed and corresponded with divers agents.

That divers letters were written which would disclose the formation of the scheme.

That the defendants with the view of defrauding plaintiffs and

by or on whose behalf the whole of the Silesia spelter which could be obtained or contracted for had been engrossed as aforesaid, so as to make it impossible for your orators and the other persons with whom contracts had been entered into to obtain the same in the usual course of trade or otherwise than from the said defendants or their agents and at most exorbitant prices. And your orators further show that by the means aforesaid the said defendants A. B. C. D. E. F. G. H. I. K. and L. M. practised a gross fraud upon your orators and all the other persons whom they prevailed upon to enter into such contracts as aforesaid; and that your orators having discovered such \*fraud have frequently applied to the said several persons and requested them to deliver up the said contracts to be cancelled; and your orators were in hopes that such requests would have been complied with, but that the said several persons colluding and confederating with each other, and with the said A. M. and T. M., refuse to comply with such requests, and pretend that the said contracts were fairly entered into and in the usual course of trade. Whereas your orators charge the contrary; and that the said defendants who had not previously been concerned in partnership together, formed a special partnership for the purpose of dealing in spelter, and the terms of such partnership were reduced into writing, and are now in the possession or power of the said defendants or some one of them; and that the said defendants formed and executed such fraudulent scheme as aforesaid, and that in the preparation and execution thereof the said M. and Co. were the principal acting parties; and that the said defendants collusively and fraudulently agreed together to purchase and forestall all the Silesia spelter which could be found in the market or contracted for so as to be delivered within the year —, and they secretly employed divers agents both in England and abroad for the purchase of such spelter; and that the said defendants respectively and more particularly the said M. and Co. corresponded with such agents at divers places, (that is to say,) with Mr. O. who was such agent at H., with Messrs. E. who were such agents at H., with Messrs. I. and Co. who were such agents at B., and with divers persons unknown to your orators who were such agents at other places. And that in the course of such correspondence divers letters were written and received by the said defendants respectively or some of them to and from such several persons, and by such letters which are now in the possession of the said defendants or some or one of them, it clearly appears as the fact is that the said defendants formed and executed such fraudulent scheme as aforesaid. And your orators charge that the said defendants having by the means aforesaid engrossed all the foreign or Silesia spelter which could be had, and having enabled themselves either to prevent any spelter being bought or to fix their own price for the same, did then and principally by the agency of the said M. and Co. with the view and design of defrauding your orators and other persons enter into the said contracts with your orators, and into divers other contracts with many other persons for Silesia spelter to be delivered some months afterwards, and at times when it was well known to the said defendants that by their own practices the same could not be ob-



tained in the fair and open market or in the usual course of trade, or any otherwise than by purchases to be made from the said defendants themselves or from persons who held the same for them. And your orators charge that at or soon after the time when the said contracts with your orators were entered into, the said defendants had in their power or had contracted for all the Silesia spelter which could be obtained or contracted for to be delivered in L. in the year —, and that such spelter except such parts thereof as the said defendants have covertly disposed of or have succeeded in selling at such exorbitant prices as aforesaid, hath since been and \*now is in the possession or power of the said defendants; and that so the truth would appear to be if the said defendants would, as they ought to do, set forth what quantities of Silesia spelter they or any other persons by their order or for their use or on their behalf purchased or contracted to purchase at any time before or in the several months of May, June and July —, to be delivered in the course of the year —, and when and where and from whom and by whose agency and at what prices and under what contracts they purchased the same, and when and where and how and to whom and by whose agency and at what prices and under what contracts they sold and disposed thereof or of any part thereof, and where and in whose possession or custody such parts thereof as have not been disposed of now are. And your orators further charge that the quantity of Silesia spelter purchased or contracted by or on the behalf of the said defendants previously to and in the several months of May, June and July —, exceeded the quantity which was and by the said defendants was well known to be the whole annual produce of the mines of S., or exceeded the whole quantity which could be brought to market in the said year —. And that at the time of the date of the said contracts the said defendants well knew that by and in consequence of their own practices the Silesia spelter by the said contracts agreed to be delivered could not be obtained in the fair and open market, and could not be delivered at all unless first purchased from the persons who held the same for the said defendants and at such artificial prices as should be fixed by them; and that the said contracts with your orators and divers other contracts were entered into by the said defendants with the fraudulent view and design of profiting by the disability under which the said defendants had themselves previously placed your orators and the other persons with whom the said contracts were entered into of performing the said contracts in the fair and usual course of trade, and of compelling your orators either to purchase Silesia spelter from the said defendants at their own artificial price, or of paying the differences between such artificial price and the prices stipulated for in the contract. And that the said defendants with the view and design of making it appear contrary to the fact that some spelter was still fairly in the market and bore a market price, have caused some small quantities to be bought and sold by different agents on their behalf at L. and elsewhere, but such purchases and sales have been merely colorable and made for the purpose of obtaining the statement of artificial prices. And that in consequence

other persons entered into said contracts.

That at the date of such contracts defendants had in their power, and still have, all the Silesia spelter which could be procured except some small quantities.

[ \*50 ]

That the same would appear from the accounts required.

That the quantity contracted for by the defendants exceeded the whole annual produce of the mines.

That at the date of the contracts defendants knew that the quantity contracted for could not be obtained in the fair and open market.

That the contracts were entered into with a view of obtaining payment of the differences.

That the defendants have caused small quantities to be bought and sold by their agents for the

purpose of obtaining the statement of artificial prices.

That the demand for spelter is limited, and the market overstocked.

[ \*51 ]

That the defendants did not enter into the contracts with the view of obtaining spelter for exportation.

That they have entered into contracts for the sale and delivery of spelter at future periods at low prices. That the difference between the present price and the prices stated in the contracts is very great.

That the defendants have prevailed upon some persons to pay such difference, and others have purchased spelter from persons not apparently connected with the defendants, but which was the same spelter which had been delivered to the defendants.

That many other persons have an interest in the contracts whose names plaintiffs are un-

of the said practices of the said defendants Silesia spelter has been raised to and very lately stood at an artificial price of 40*l.* per ton and upwards. And your orators charge that the demand for spelter is limited, and that the quantity purchased and contracted for by the said defendants is more than could be sold in I. or elsewhere for a great number of years; and that before the said contracts or any of them were entered into, the said defendants well knew as the fact is that the market in I. was overstocked with Silesia spelter which bore a low price there; and that the said defendants did not in fact enter into the said contracts or any of them with the intention of \* obtaining spelter for exportation to I. or any fair or usual purpose of trade; and that the said defendants well knowing that the present price of Silesia spelter is wholly artificial and cannot be maintained, have themselves entered into contracts for the sale and delivery of spelter in February next or in the course of the next spring at the price of 22*l.* or 22*l.* 10*s.* per ton and have sold some quantities for consumption in England at prices, which exclusive of duty and freight do not exceed the rate of 19*l.* 10*s.* per ton. And your orators charge that the difference between the artificial price to which the said defendants have raised the price of spelter as aforesaid and the prices stated in their said contracts with your orators and others as aforesaid are very great; and that the whole amount thereof upon all the contracts entered into by the said defendants as aforesaid is great and equal to some hundreds of thousands of pounds. And your orators charge that the said defendants have prevailed upon some of the persons who entered into such contracts to pay such differences; and that other of such persons have performed their contracts by purchasing spelter, and that some parts of such spelter have been purchased from the defendants themselves, and other parts thereof, although purchased from persons who did not appear to have any connexion with the said defendants, afterwards appeared to be the same spelter which on a prior occasion had been delivered to the said defendants. And your orators charge that divers other persons besides the said defendants have some interest in the said fraudulent contracts, or are entitled to receive some part of or some per centage on the money raised or expected to be raised thereby, but your orators have been and are wholly unable to discover the names of such other persons unless the same shall be as they ought to be discovered by the said defendants. And your orators charge that the said defendants A. B. C. D. E. F. G. H. I. K. and L. M. being fully aware that they were engaged in a fraudulent and improper transaction, instructed the said M. and Co. to conceal their names in the greatest number of the aforesaid contracts, and it was intended that their names should not be at all disclosed, and that the same would not have been disclosed if all the parties to the said contracts had submitted to pay the differences or losses which under the circumstances aforesaid were demanded from them, but that some of such parties refused to submit, and insisted upon knowing who were the principals on whose behalf the said contracts were entered into; and thereupon the said defendants caused a writ in an action for the breach of one of such contracts to be sued out and served upon one of such parties, and

the names of the said defendants A. B. C. D. E. F. G. H. I. K. and L. M. appeared as plaintiffs on such writ, and were thereby for the first time disclosed after the said M. and Co. had repeatedly refused or declined to disclose the same. And your orators charge that the said defendants, with the view and design of concealing the Silesia spelter engrossed and purchased by them as aforesaid, have caused considerable quantities thereof to be sent to B. and other places where spelter has not been usually sold, and where there is no market for the same. And your orators charge that the said defendants never contemplated \*receiving the Silesia spelter which they so contracted to purchase from your orators as aforesaid, but well knew that by their own contrivance the said contracts could not be executed, and intended only to receive the differences in price which were occasioned by themselves as aforesaid. And your orators charge that throughout the whole of the aforesaid transactions the said M. and Co. have been the acting agents of the said other defendants in effecting the said fraudulent contracts, and that it was at their suggestion and through their advice and management that the aforesaid contracts were entered into with your orators; and that by agreement between the said M. and Co. and the said other defendants it is stipulated that the said M. and Co. are to have some share of or interest in the profits and advantage to arise from the said contracts with your orators, and that the said M. and Co. accordingly claim to have an interest therein; and the said other defendants with a view to conceal several of the matters aforesaid, and to prevent your orators from obtaining any discovery thereof have lately delivered many papers, letters and documents relating to the matters aforesaid, or some of them to the said M. and Co. in whose hands the same now are. And your orators charge that the said M. and Co. having participated in the whole of the aforesaid fraud, and being interested in the said contracts, ought to make such discovery as is hereinafter prayed for, and to pay your orators the costs of this suit. And your orators further charge that in the course of the transactions aforesaid, divers letters and correspondence besides the letters and correspondence hereinbefore mentioned, have passed between the said defendants or other persons on their behalf, and divers persons residing abroad and in England; and that the said defendants have now or lately had in their possession or power divers letters copies of or extracts from letters and divers contracts agreements invoices bills of parcels accounts books of accounts papers memorandums and writings relating to the matters aforesaid or some of them, and whereby if the same were produced the truth of the matters aforesaid or some of them would appear. And your orators charge that notwithstanding the matters aforesaid the said defendants require your orators to perform the said three contracts of the 6th and 9th days of May, and the said defendants having by such means as aforesaid raised the price of spelter to the sum of 40*l*. per ton, and well knowing as the fact is that your orators were unable to prove the matters aforesaid without a discovery from the said defendants, threaten and intend unless your orators will consent to pay the difference between such artificial price and the prices stated in the said contracts, to commence and prosecute actions at law against your

able to discover, except by a discovery from the defendants.

That the defendants A. B. &c., did not intend that their names should be dis-

[ \*52 ]

closed, but that having commenced an action against some persons who refused to perform their contracts, the defendants' names appeared in the writ.

That the defendants have sent quantities of spelter to places where there is no market for it.

Charge that the defendants A. M. and T. M. were the acting agents in effecting the contracts.

That they are to have and claim a share in the profits.

That letters, &c., have been delivered to them.

That they have participated in the fraud.

Charge as to letters, &c.

Prayer.

[ \*53 ]

orators for breach of the said contracts or some of them. And your orators charge that the said defendants ought to be restrained from so doing. All which actings doings pretences and refusals, &c. [see form VI. p. 5, *interrogating to the stating and charging parts.*] And that upon a full and fair disclosure of the several matters aforesaid the said several contracts of the 6th and 9th days of May may be declared to have been obtained from your orators by fraud, and that the same may be delivered up to be cancelled; and that \*the said defendants may be restrained by the order or injunction of this court from commencing or prosecuting any action at law for breach of the said contracts, or any or either of them or in any manner touching or concerning the same. And that the said defendants may pay unto your orators their costs of this suit; and that your orators may have such further or other relief as the nature and circumstances of this case may require and to your honors shall seem meet. May it please your honors, &c. [See forms No. 1 and 4, p. 6.]

*Pray subpoena and injunction against A. B. C. D. E. F. G. H. I. K. L. M. A. M. and I. M.*

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\*XVI. *Bill to have an agreement for a building lease of a piece of ground delivered up to be cancelled, on the ground of gross fraud and misrepresentations on the part of the defendant;—an account taken of the moneys advanced by the defendant to the plaintiff, and also of the sums paid by the plaintiff to the defendant, and that the amount of the latter may be set off against the amount of the moneys advanced,—that a bond executed by the plaintiff to the defendant may be declared to stand as a security only for what is actually due to the defendant, and upon payment thereof may be delivered up to be cancelled, and for an injunction to restrain all proceedings at law.*

To, &c.

Humbly complaining sheweth unto your honors your orator A. B. of, &c. surgeon and apothecary, debtor and accountant, &c. [see form No. 2, p. 2.] That in the year 1823 your orator having previously been in partnership with M. A. commenced business on his own account as a surgeon and apothecary at N. aforesaid. And that by an agreement dated the 27th day of August 1823 your orator agreed to take from C. D. the defendant hereto a lease of a certain dwelling-house and premises at N. aforesaid at the yearly rent of 50*l.*, and your orator thereby agreed to put the said dwelling-house into good repair, and to make such several additions and improvements thereto and thereon as were specified in the said agreement. And your orator further sheweth unto your honors that pending the treaty for the said agreement your orator informed the said C. D. as the fact is that your orator had not the means of making the said repairs additions and improvements. And that thereupon the said C. D.

Plaintiff agreed with the defendant to take a lease of certain premises and to repair the same.

Plaintiff being unable to repair the same, defendant agrees to lend him 100*l.* upon his bond.

represented to your orator that the costs of such repairs additions and improvement would not exceed the sum of £90 or thereabouts. And that he the said C. D. would lend the sum of £100 to your orator upon his bond. And that by such representation and the promise of such loan your orator was induced to sign the said agreement which was prepared by the said C. D. and by him brought to your orator for his signature. And that at or soon after the time when the said agreement was signed, the said C. D. brought to your orator for his execution a certain bond or obligation in writing dated the — day of — 1823 in a penal sum for securing payment of the sum of £100 and interest at 5 per cent. per annum to be paid quarterly by your orator to the said C. D. And that your orator executed such bond in expectation that the sum of £100 thereby secured was to be employed in and would be sufficient for effecting the said repairs additions and improvements, but that the said C. D. then required that 25l. part of such sum of 100l. should be applied in purchasing the fixtures of the said house and the vegetables in the garden, and that a further sum of 25l. other part of the said sum of 100l. should be applied in paying two quarters' rent which he alleged would be due at Michaelmas then next, and that other part of the said sum of 100l. should be applied in paying the expenses of the said bond. And your orator further sheweth that no such rent as was alleged would be due at Michaelmas was or in fact could be then due, as your orator was not to take possession till that time; but that notwithstanding such facts and notwithstanding your orator's disappointment in not having the whole of the said sum of 100l. for the purpose of the said repairs additions and improvements, your orator was prevailed upon by the said C. D. to consent to such application as aforesaid of such parts thereof as aforesaid, and that your orator received from the said C. D. as a consideration for the said bond for 100l. a sum of money which did not amount to 50l. And your orator having as aforesaid executed the said agreement and being in possession of the said premises directed the repairs additions and improvements specified in the said agreement to be commenced and carried on, and your orator did so in the expectation founded on the representation of the said C. D. that the whole costs thereof would not exceed the sum of 100l.; but in the progress of such work your orator ascertained that the cost thereof greatly exceeded the said sum, and your orator having contracted a debt on account of the said works which he was unable to pay was reduced to a situation of great embarrassment and difficulty, but being in hopes that he should be able to extricate himself by his success in his profession if he could obtain time, your orator applied to the said C. D. and requested him to lend your orator a further sum of 100l. and that after some delay the said C. D. declined to lend your orator any further sum by simple loan, but he stated to your orator that he was entitled to a piece of ground which was eligible for building good houses: and that if your orator would take such piece of building ground on such terms as he should propose, he the said C. D. would at the same time lend your orator the further sum of 100l. which your orator had requested. And your orator having

[ \*54 ]

Plaintiff executed the bond in expectation that the 100l. would be sufficient. Various deductions made by the defendant out of the 100l.

Plaintiff only received 50l., and having directed the repairs to be made, discovered that the cost thereof would far exceed 100l.

Being greatly embarrassed, he applied to the defendant for a further loan,

which he refused, unless plaintiff would take a building lease of a piece of ground.

The representations made by the defendant to the plaintiff as to such piece of ground.

[ \*55 ]

Plaintiff prevailed upon to accept the terms proposed.

Agreement made between the plaintiff and the defendant and his wife.

hesitated respecting such offer, the said C. D. stated that he would let the said piece of building ground to your orator on such terms as would pay your orator  $16\frac{1}{2}$  per cent. per annum on the money he should lay out in respect thereof, and he stated to your orator that he had himself realized  $16\frac{1}{2}$  per cent. in building under circumstances similar to those which he offered to your orator. And your orator further sheweth that your orator was wholly ignorant of \*building speculations and wholly incompetent to form any opinion respecting any building contract or the prospect of making any profit thereby; and that your orator was very reluctant to enter into any agreement of that nature, but he was under such circumstances of difficulty and embarrassment as aforesaid and was not able to prevail on the said C. D. to lend him the sum of £100 otherwise than by entering into such new contract; and that the said C. D. was himself a person of experience in building contracts and he well knew that your orator was entirely ignorant thereof, but he affected to be your orator's friend and to be willing to assist him as far as he properly could, and under the circumstances and by the means aforesaid your orator was prevailed upon to agree to such terms as were offered by the said C. D. and soon afterwards the said C. D. brought to your orator an agreement in writing and a bond already prepared; and that such agreement in writing was in the words and figures and to the effect following (that is to say): "An agreement made the — day of —, —, between C. D. of, &c. and M. his wife of the one part, and A. B. of &c. aforesaid surgeon of the other part. The said C. D. and M. his wife in consideration of the sum of £200 to be paid to him by the said A. B. do hereby agree to let by lease as hereinafter mentioned unto the said A. B. who hereby agrees to take under such intended lease All that piece or parcel of ground situate &c. for the term of sixty-one years commencing, &c. at and under the yearly rent of £20 payable, &c. [*Covenants by A. B. with C. D. and M. his wife at his own expense within the space of twelve months from the date thereof to erect and build upon part of the aforesaid piece of ground two good and substantial messuages or dwelling-houses each containing six rooms, &c. to the satisfaction of the said C. D. and M. his wife or their his or her surveyor; and also to erect and set up good and substantial fences for dividing, &c.*] And it is hereby agreed between the said parties hereto, that after the erection building and finishing and setting up of the said two messuages or dwelling-houses buildings and fences in manner and within the time aforesaid, the said intended lease and a counterpart thereof shall at the desire of either of the said parties hereto be prepared by the solicitor of the said C. D. and M. his wife, and be duly executed and delivered by the said parties respectively and the costs thereof shall be borne and paid by the said A. B. his executors administrators or assigns. And it is agreed that such lease shall contain covenants and clauses in the usual and proper forms as follows, on the part of the said A. B. covenants to pay the said rent in manner aforesaid, to pay the land tax and all other taxes rates duties charges and assessments upon or in respect of the premises, to keep the said messuages or dwelling-houses and

fences well and sufficiently repaired in all respects, and so to leave and yield them up with all additions improvements and fixtures to the freehold at the end or sooner determination of the said term of sixty-one years; and that the said C. D. and M. his wife and their respective heirs and assigns agents workmen and servants shall be at liberty to enter upon and view the premises, and give or leave notice to do repairs wanting thereto within three calendar \*months, and for the repairs to be done within that space of time after every notice, and to keep insured the said messuages or dwelling-houses buildings and premises in £600 or such other sum as shall be sufficient to cover the value thereof during the continuance of the term, in the Eagle or some other respectable insurance office in the joint names of the lessors and lessee, and in case of fire the money to be received under the policy to be laid out in rebuilding or repairing the premises. A proviso for re-entry by the lessors on non-payment of the rent for twenty-one days or on breach of covenant by the lessee his executors administrators or assigns, and a covenant by the said C. D. for himself and the said M. his wife for quiet enjoyment." As witness &c. As by the said agreement reference being thereunto had will appear. And your orator further sheweth that your orator without having any advice or assistance executed the said agreement at the request of the said C. D. and on the faith of the representations made by him that the same was a just and proper agreement, and that the consideration thereby agreed to be given by your orator was no more than a just and proper consideration for the benefits thereby purported to be secured to your orator. And your orator further sheweth that at the time when your orator executed the said last mentioned agreement the said C. D. tendered to your orator a bond dated the — day of —, — in a penal sum for securing the payment of £300 and interest at the rate of £5 per cent. per annum to be paid quarterly by your orator to him the said C. D. and he represented that such sum of £300 consisted of the sum of £200 the consideration money mentioned in the said agreement and the sum of £100 which he had agreed to lend to your orator on the terms of his signing the said contract; and that your orator under the circumstances aforesaid executed the said bond; and that thereupon the said C. D. advanced to your orator a small sum of money being the amount of the said sum of £100 after deducting therefrom various sums of money which the said C. D. then alleged to be due to him from your orator for rent and otherwise, but the particulars or amount of which your orator being at the time in a state of great anxiety and perplexity did not then understand and cannot now recollect; and that on divers occasions since the execution of the said bond the said C. D. has by various artifices and under particular circumstances prevailed upon your orator to pay the interest of the money thereby secured, and also the rent agreed to be reserved by the said agreement of the — day of —, —, but your orator has lately discovered as the fact is that he was greatly imposed upon in the transaction aforesaid; and that he was fraudulently prevailed upon to execute the said agreement and the said bond for £300 by false representations of the value of the piece of land therein

[ \*56 ]

Plaintiff executed the agreement on the faith of the defendant's representations.

Bond for 300*l.* tendered to the plaintiff,

which he executed.

A small sum only paid to the plaintiff.

Plaintiff prevailed upon to pay various sums for interest and rent, but has lately discovered that he had been greatly imposed upon.

[ \*57 ]

Application to the defendant to deliver up the second agreement and bond to be cancelled.

## IV.

Defendant refuses to comply therewith. Pretence that the bond was executed in consideration of 300*l.* *bona fide* lent, and that the second agreement was entered into with full knowledge of the value of the land.

Charge the contrary.

That the defendant took advantage of plaintiff's distress.

That plaintiff complied with defendant's terms on the faith of his representations.

comprised and the eligibility thereof for building; and that in fact the said piece of land which in quantity does not amount to half an acre is of very little value and cannot be used for any purpose other than building cottages or houses of a low description, and that instead of being worth £200 in advance and an annual rent of £20 on a building lease for sixty-one years, the fee-simple thereof is not worth more than £100 and the utmost value thereof for the purpose of building does \*not exceed an annual rent of 10*l.* And your orator having discovered such imposition and fraud as aforesaid has frequently and in a friendly manner by himself and his agents applied to the said C. D. and requested him to deliver up the said agreement of the — day of —, — and the said bond to be cancelled, and to set off the sums paid by your orator by way of rent under the said agreement and by way of interest on the said sum of 200*l.*, against the sums actually and *bona fide* advanced to your orator by the said C. D. as aforesaid; and your orator hath thereupon offered to pay to the said C. D. the full amount of what after such set-off should appear to be due. And your orator was in hopes that such his just and reasonable requests would have been complied with as in justice and equity ought to have been the case. But that the said C. D. combining and confederating with divers other persons now unknown to your orator whose names when discovered your orator prays he may be at liberty to insert herein with apt manner and words to charge them as parties defendants hereto, and contriving how to injure and defraud your orator in the premises, absolutely refuses to comply with such requests, sometimes pretending that the said bond for £300 was executed in consideration of money to that amount which was *bona fide* lent and advanced by him to your orator; and that the said agreement of the — day of —, —, was distinct from and independent of any loan, and that the same was made and entered into by your orator with full knowledge of the value of the land therein comprised and uninfluenced by any representations of the said defendant. Whereas your orator charges the contrary; and that your orator was wholly ignorant of the value of the said land and of all building speculations or contracts; and that your orator had no intention or wish to enter into any such speculation or contract, but that the said defendant taking advantage of the distress and embarrassment in which your orator was placed, and of your orator's ignorance of the matters aforesaid, and being applied to by your orator for the loan of £100 refused to advance such loan unless your orator would enter into such contract. And that your orator complied with the said defendant's terms in the belief that he had no other mode of extricating himself from his difficulties, and on the faith that the representations made by the said defendant respecting the said piece of land and its eligibility for building on were true; and that the said defendant at the time when he so prevailed on your orator to enter into the said contract well knew that your orator was ignorant of the nature and extent of the obligations he was entering into, and had no knowledge of the value of the said piece of land and of the probable profit to be made by building thereon, other than such as he derived from the said defendant; and that under such circumstances



the said defendant well knowing that the said piece of land if fairly and *bona fide* sold in fee-simple was not worth more than £100 or thereabouts, and that the same if let on a building lease was not worth more than an annual rent of £10 or thereabouts, nevertheless represented to your orator that the same when let on a building lease was worth an annual rent of £20 besides a premium of £200 to be paid down; and that \*by entering into a contract to pay such premium and such annual rent, and to build in the manner in the said agreement mentioned, your orator would be able to realize a profit of 16½ per cent. per annum upon the money he should lay out. And your orator charges that such representations were grossly fraudulent, and were made for the purpose of extorting money from your orator. And that your orator had no advice or assistance on the occasion of entering into the said agreement but relied solely on the honor and good faith of the said defendant. And that your orator for a considerable time after the date of the said agreement continued to be in circumstances of embarrassment and was much in the power of the said C. D., and did not till very lately discover the imposition which had been practised upon him; and that he hath not commenced any building on the said premises. And as evidence of the fraud which was practised upon your orator as aforesaid, your orator charges that the piece of land comprised in the said agreement of the — day of —, — is part of a long strip of land belonging to the said defendant, and that one end of the said strip of land is bounded by the high road from L. to B. and is eligible for building good houses, but that the other end thereof being the part comprised in the said agreement is remote from the said highway and of very little value; and that for a considerable time before and up to the time when the said defendant prevailed on your orator to enter into the said agreement he employed one H. F. to let the whole of the said strip of land on a building lease of sixty-one years at the annual ground rent of £20 without any premium; and that applications were made to the said H. F. in respect thereof, but no person was found willing to give such rent; and that the said defendant was informed and well knew that the whole of the said strip of land could not be let for £20 a year without a premium, but nevertheless represented to your orator that the worst and lesser part thereof, viz. the part thereof most remote from the road was worth not only an annual rent of £20 but also a premium of £200, and having by such means prevailed on your orator to sign the said agreement and execute the said bond, he afterwards employed the said H. F. and other persons to let the other, being the much greater and most valuable part of the said strip of land, for an annual rent of £20 without asking any premium for the same, but was unable to find any person to take the same at that price. And under the circumstances aforesaid, your orator charges that the said agreement of the — day of —, — ought to be delivered up to be cancelled; and that the said bond ought to stand as a security only for the money which has been really advanced to your orator by the said defendant, and that the moneys which have been paid by your orator under the said agreement or in pursuance thereof ought to be set off against the moneys which have been advanced to your orator

[ \*58 ]

That defendant's representations were grossly fraudulent.

That plaintiff had no advice, and was in great embarrassment.

Charge as to evidence of the fraud.

That the second agreement ought to be cancelled.

[ \*59 ]

Actions  
threatened on  
the bonds,

and on the  
second agree-  
ment.

Charge that  
the defendant  
ought to be  
restrained  
from such  
proceedings,  
and ought to  
set forth the  
accounts re-  
quired, and a  
schedule of  
books and  
papers.

Interrogatory  
as to the pecu-  
niary dealings  
between the  
plaintiff and  
defendant.

Interrogatory  
as to books,  
&c.

Prayer.

by the said defendant upon the said bond of the — day of —, — or otherwise; and that if an account were taken of the pecuniary dealings between your orator and the said defendant it would appear as the fact is that a very small (if any) sum of money is now due to the said defendant on the balance thereof, but he nevertheless threatens and \*intends to commence one or more action or actions at law against your orator upon the said bonds of the — day of —, — and the — day of —, — or one of them for the purpose of compelling your orator to pay the whole of the moneys secured thereby; and he also threatens and intends to commence and prosecute some proceedings against your orator to compel him to pay the rent agreed to be reserved by the said agreement of the — day of —, —. And your orator charges that the said defendant ought to be restrained by the order or injunction of this court from commencing or prosecuting any such proceedings; and that the said defendant ought to set forth such accounts as are hereinafter prayed for, and a true list or schedule of divers books accounts papers and writings relating to the matters aforesaid, which your orator charges are now or lately were in the said defendant's possession or power and from which the truth of the matters aforesaid or some of them would appear but he refuses so to do. All which actings doings pretences and refusals, &c. [*see form VI. p. 5, interrogating to the stating and charging parts.*] And that the said defendant C. D. may set forth a full true and just account of all and every the pecuniary dealings and transactions between him and your orator, and particularly of all and every the sum and sums of money which have been paid lent or advanced by the said defendant to your orator, and of all and every the sum and sums of money which your orator or any person or persons by his order or for his use hath or have paid to or on account of the said defendant, and when and where and at what time or times and in what manner and in what amounts and in whose presence and by whom and to whom the said sums respectively and each and every of them and each and every part thereof were and was received and paid, and what (if any) balance or sum of money is now due and owing to the said defendant from your orator, and how the said defendant makes out the same. And that the said defendant may in manner aforesaid answer and set forth whether he hath not now or had not lately and when last in his possession custody or power divers or some and what books accounts papers and writings or book account paper or writing relating to the matters aforesaid, or some and which of them or how otherwise. And whether thereby or by some or one and which of them if the same were produced or otherwise and how, the truth of the matters aforesaid, or some or one and which of them would not appear or how otherwise, and if not why not. And that the said defendant may set forth a full true and perfect list or schedule of all and every the said books accounts papers and writings, and may produce and leave such of them as now are in his possession custody or power in the hands of his clerk in court for the usual purpose; and may set forth what have or hath become of such of them as are or is not now in his possession custody or power. And that it may be declared that the said agreement of the

— day of —, [i. e. *the second agreement*] was obtained from your orator by misrepresentation and fraud and ought to be delivered up to be cancelled; and that the same may be delivered up accordingly. And that it may be declared that the said bonds ought to stand as a security only \*for what if anything is really and and justly due from your orator to the said defendant; and that an account may be taken of all and every the sum and sums of money which have been advanced and paid to your orator by the said defendant, and of the interest which has accrued due in respect thereof, and of the several sums of money which have been paid by your orator on account of such interest. And that an account may also be taken of the several sums of money which have been paid by your orator to the said defendant under or in pursuance of the said agreement of the — day of —, — by way of rent for the piece of land therein comprised or by way of interest on the sum of £200 therein mentioned. And that the amount of such last-mentioned sums of money may be set off against the moneys advanced to your orator by the said defendant and the interest thereof and be deducted therefrom. And that the full amount of what if any thing is due from your orator to the said defendant may be ascertained. And that upon full payment thereof (which your orator hereby offers to make),(4) the said bonds may be delivered to be cancelled; and that the said defendant may be restrained by the order or injunction of this honorable court from commencing or prosecuting any actions or action or any proceedings at law against your orator for recovering the moneys secured by the said bonds or either of them or any part thereof, or touching or concerning the matters aforesaid or any of them. And that your orator may have such further and other relief in the matters aforesaid as the nature and circumstances of this case may require and to your honors shall seem just. May it please your honors, &c. [See forms No. 1, and 4, p. 6.]

*Pray subpoena and injunction  
against C. D.*

(4) In the case of *The Columbian Government v. Rothschild*, 1 Sim. 103, the Vice Chancellor observed, that the court originally required that a bill for an account should contain an offer on the part of the plaintiff to pay the balance if found against him; but that it is not now considered necessary.

The mere filing a bill for an account enables the court to do all justice between the parties.

*\*XVII. Cross bill to set aside an agreement for the conveyance of a piece of ground, the specific performance of which was sought in another suit. The cross bill being filed by the defendant to the original bill and the party to whom she had sold and conveyed the piece of ground, against the plaintiffs in the original bill, one of whom was the solicitor to the other, and as alleged, had purchased the ground under the agreement sought to be set aside, but with full knowledge that his co-plaintiff had waived all claim under the agreement.*

In the Exchequer.

To, &c.

Plaintiff M. A. R. being in confidential friendship with J. D. designed to make him a present of a piece of ground.

Instructions given by plaintiff M. A. R. to her attorney to prepare an agreement, which was prepared and executed by defendant J. D. and the plaintiff M. A. R.

Humbly complaining show unto your honors your orator and oratrix T. H. of, &c. and M. A. R. of, &c. widow, debtors, &c. [*see form No. 2, p. 2.*] That in and before the month of — your oratrix was seised and possessed of a piece or parcel of ground lying, &c. And your orator and oratrix further show unto your honors that in and about the said month of — your oratrix was in habits of confidential friendship with J. D. then of B. bookseller, (one of the defendants hereinafter named) and the said J. D. then pretended to take great interest in the concerns of your oratrix and promised his advice and assistance in the settlement of her affairs, your oratrix having been left a widow about — months before that time, and the said J. D. conducted himself altogether towards your oratrix with an intention to induce your oratrix to believe that it was his purpose to make proposals of marriage to her. And your orator and oratrix further show unto your honors that your oratrix having before made many presents to the said J. D. did in the said month of — in a conversation with the said J. D. express to him her intention to make him a present of the said piece of ground, and the said J. D. then pressing your oratrix to carry this intention into effect by executing some written agreement, your oratrix instructed her attorney Mr. M. of, &c. to prepare an agreement, but your oratrix, not thinking it prudent to part absolutely at that time with her interest in the said piece of ground, directed Mr. M. to insert the sum of £ — as a consideration to be paid by the said D. J. to your oratrix for the purchase of the same which sum of £ — your oratrix then considered to be above the value of the said piece of ground, and the said Mr. M. did accordingly prepare an agreement in writing in the words and figures or to the purport and effect following (that is to say,) &c. As in and by, &c. And your orator and oratrix further show unto your honors, that after the said agreement in writing was prepared by the said Mr. M. and in or about — the said J. D. called at the house of the said Mr. M. and the said Mr. M. then read over the said written agreement to the said J. D. or otherwise informed the said J. D. of the contents thereof, and the said J. D. thereupon executed the said

\*written agreement in the presence of the said Mr. M. And your orator and oratrix further show that after the said J. D. had executed the said agreement the said Mr. M. delivered the same unto him, and the said J. D. on the same day brought the said agreement to your oratrix at her own house and your oratrix thereupon also executed the same at the request of the said J. D. And your orator and oratrix further show unto your honors that at the time of executing such agreement as aforesaid by your oratrix and the said J. D. it was understood by your oratrix and the said J. D. notwithstanding the said sum of —£— was mentioned as the consideration of the said agreement in order to retain to your oratrix a power over the said piece of ground, that it was the ultimate intention of your oratrix to make the said J. D. a present of the same. And your orator and oratrix further show unto your honors that although the sum of £—— was mentioned in the said agreement to have been paid by the said J. D. to your oratrix in part of the aforesaid sum of £—— yet that in truth no part of the said £—— was ever paid by the said J. D. And your orator and oratrix further show unto your honors that after the making of the said written agreement, instead of continuing his good offices and friendship to your oratrix in the faith of which your oratrix had executed the said agreement the said J. D. pretended to have cause of complaint against your oratrix and not only refused all further assistance in the management of her affairs but actually caused your oratrix to be arrested in two separate actions for sums of money which the said J. D. had advanced for her use in the management of her concerns, expressly for the purpose of distressing the feelings of your oratrix and not from any apprehension that such arrests were necessary for securing the debts due to the said J. D. And your orator and oratrix further show that upon such conduct on the part of the said J. D. toward your oratrix, your oratrix caused application to be made to the said J. D. to carry the aforesaid written agreement into effect by payment of the said sum of —£— therein mentioned, on having a conveyance made to him of the said piece of ground or otherwise to deliver up the said agreement to be cancelled. And the said J. D. on such applications being made to him by the said Mr. M. on the part of your oratrix absolutely refused to pay the said sum of £—— and to carry the said agreement into effect, and the said J. D. then declared to the said Mr. M. that as he and your oratrix were no longer on friendly terms he did not consider himself entitled to the said piece of ground, and that therefore he waived and relinquished all claim thereto under the aforesaid agreement, and would have nothing further to do with the said agreement. And your orator and oratrix further show unto your honors that after the said J. D. had so waived the said written agreement your oratrix agreed with your orator to sell to him the said piece of ground, together with other parcels of land at B. aforesaid at or for the price or sum of £—— the price of the said piece of ground being calculated in the said sum of —£— at —£—, and afterwards by indentures of lease and release bearing date respectively on or about — and by assignment bearing date the said — day of — your oratrix, in consideration of the said sum of £—— then in hand paid

No part of the consideration mentioned in the agreement ever paid.

A disagreement having arisen, J. D. caused plaintiff M. A. R. to be arrested in two actions.

Applications to J. D. to fulfil this agreement by paying the consideration-money, which he refused to do, and waived all claim.

Agreement by plaintiff M. A. R. to sell the ground to plaintiff T. H. and conveyance to him.

Applications to J. D. to deliver up the agreement.

Pretence that B. W. has purchased the ground of J. D. without notice.

Charge that B. W. is the attorney of J. D. and well knew all the circumstances, and corresponded with plaintiff's solicitor.

That if any agreement has been entered into between the defendants, it is merely colorable.

\*to your oratrix conveyed released and assigned the said piece of ground together with the said other parcels of land unto your orator his heirs executors administrators and assigns. As in and by, &c. And your orator and oratrix further show unto your honors that your orator and oratrix have made frequent applications to the said J. D. to deliver up the aforesaid written agreement to be cancelled, with which just and reasonable requests your orator and oratrix well hoped that the said J. D. would have complied as in justice and equity he ought to have done. BUT NOW SO IT IS may it please your honors that the said J. D. combining and confederating with B. W. of, &c. and with divers other persons, &c. [see form IV. p. 5.] And the said B. W. pretends that he hath agreed with the said J. D. to purchase the said ground in the aforesaid written agreement mentioned at or for a certain sum of money paid or to be paid by him to the said J. D. as the consideration for the same, and that he had no notice at the time he so agreed with the said J. D., of the circumstances under which the aforesaid agreement was entered into by and between your oratrix and the said J. D., or that the said J. D. had afterwards waived the agreement. Whereas your orator and oratrix expressly charge that the said B. W. in and before the said month of — and from thence hitherto hath been and still is the attorney and confidential adviser of the said J. D. in all his affairs, and that he well knew from time to time the circumstances under which the aforesaid written agreement was entered into, and all that passed respecting the same by and between your oratrix and the said J. D. or by and between other persons on their part and behalf; and in particular the said B. W. well knew before he made the said pretended purchase of the said J. D., that the aforesaid written agreement was not entered into in consequence of any actual contract between your oratrix and the said J. D. respecting the said piece of ground, but merely with a view to your oratrix's ultimate intention to make a present of the said piece of ground to the said J. D. and that the said J. D. had afterwards absolutely waived all claim to the said piece of ground under the said agreement. And your orator and oratrix further charge that the said B. W. before he made the said pretended purchase of the said J. D. by the direction of the said J. D. and as his attorney or agent corresponded with Mr. M. hereinbefore named as the attorney of your oratrix on the subject of the said written agreement; and that the said B. W. was then perfectly acquainted with the real nature of the transaction between the parties by the said Mr. M. And your orator and oratrix further charge that if the said B. W. has in fact entered into any agreement with the said J. D. for the purchase of the said piece of ground, yet that no part of the consideration mentioned in such agreement hath ever been really paid or was meant to be paid by the said B. W. and that such agreement was merely colorable and was meant only to vest a nominal right in the said B. W.; and that the said J. D. was advised by the said B. W. to enter into such a scheme or device to compel your oratrix to convey the said piece of ground to the said B. W. who was to hold the same as a trustee for the said J. D.; and that in truth the said J. D. had totally abandoned all idea of claim-

\*ing under the aforesaid written agreement until he was otherwise advised by the said B. W. And your orator and oratrix humbly insist that they are well entitled to have the aforesaid written agreement entered into between your oratrix and the said J. D. delivered up to be cancelled; but nevertheless under such and the like pretences as aforesaid the said confederates refuse to deliver up the same. And the said confederates have filed their bill in this honorable court to compel your oratrix to execute a conveyance of the said piece of ground to the said B. W. All which actings, &c. [see form VI. p. 5, *interrogating to the stating and charging parts.*] And if the said confederates shall pretend that the said B. W. has in fact entered into any agreement with the said J. D. for the purchase of the said piece of ground, then that they may set forth the said agreement and all the particulars thereof, and when and where and with what view the said agreement was entered into and by whom the same was prepared and drawn; and if any part of the consideration is in the said agreement mentioned to have been paid, then that they may set forth when and where and in whose presence such part of the said consideration was so paid by the said B. W. and to whom the same was paid and of what the same consisted. And whether the said sum of £—— mentioned in the said agreement to have been paid by the said J. D. to your oratrix in part of the said sum of £—— was ever paid; and if the said J. D. shall pretend that the said sum of £—— was paid by him, then that he may set forth when where how and in what manner and to whom and in whose presence the same and every part thereof was so paid.

And that the said confederates may be compelled to make a complete answer to the several matters aforesaid; and that the said written agreement so entered into as aforesaid between your oratrix and the said J. D. may be decreed to be delivered up to your oratrix to be cancelled. [*And for further relief, see form VIII. p. 5.*] May it please, &c. [*See form No. 1, p. 1.*]

M.

*Pray subpoena against  
J. D. and B. W.*

That J. D. had wholly abandoned the agreement with plaintiff M. A. R.

That defendants have filed their bill against plaintiff M. A. R.

Interrogatory as to the agreement set up by the defendants.

And as to the consideration-money alleged to have been paid to the plaintiff.

Prayer.

XVIII. *Bill by lessee to have an agreement delivered up to be cancelled, by which he gave up the remainder of his lease contrary to his intention, he not being able to read or write; praying also to have the original lease confirmed,—also for an account and repayment of the land-tax paid by the plaintiff,—and for an injunction to restrain the defendant from proceeding in an action of ejectment commenced by him.*

To, &amp;c.

Humbly complaining sheweth unto your lordship your orator W. Indenture of A. of, &c. That on or about — a certain indenture of lease lease.

Death of lessor, and title of the defendant.

No notice given to the plaintiff to determine the lease.

Proposal to the plaintiff to enter into a new agreement.

Plaintiff unable to read or write, believing that the lease was determined, and confiding in the defendant, consented to and executed the agreement, which was not read over to him.

Plaintiff expended large sums in repairs.

Defendant demanded an increased rent, with which plaintiff refused to comply, and was served with a notice to quit.

\*was made and duly executed between E. L. then of, &c. whereby the said E. L. did, &c. [*stating the lease to the plaintiff.*] As in and by the said indenture to which your orator craves leave to refer when produced to this honorable court will appear. And your orator further sheweth unto your lordship that your orator entered upon and possessed the said farm and lands under and by virtue of the said lease; and that the said E. F. departed this life in or about, &c. and that after his death I. H. of, &c. the defendant hereinafter named became by purchase or otherwise seized of or entitled to the reversion of the said farm and lands, subject to the said lease. And your orator further sheweth that no notice was ever given to your orator to determine or make void the said lease at the end of — years from the commencement of the said term of — years thereby demised, pursuant to the proviso therein contained or otherwise, but upon the expiration of such — years, the said I. H. proposed to your orator to enter into a new agreement as to the said farm and lands giving your orator to understand that the interest of your orator therein was determined. And the said I. H. upon that occasion, as he had frequently done before, expressed great friendship for your orator, and declared that it was his wish and intention that your orator should continue in possession of his said farm as long as he lived. And your orator further sheweth that your orator can neither write nor read, and that your orator fully believing that his interest in the said lease was determined, and that the said defendant who is a man of fortune, was dealing fairly by your orator, and was not intending to take any advantage of him your orator consented to enter into the new agreement proposed by the said I. H.; and thereupon the said defendant caused such agreement to be reduced into writing by one M. B. and your orator set his mark thereto, but the same was not read over or in any manner explained to him, and such agreement was in the words and figures or to the purport and effect following, (that is to say :) [*To remain one year and pay the land-tax which he was not to pay by his lease.*] As in and by, &c. And your orator further sheweth unto your lordship that confiding in the said I. H.'s professions of friendship for your orator, and in his aforesaid declarations that it was his wish that your orator should continue in his said farm as long as your orator lived, your orator proceeded to expend considerable sums of money in erecting new buildings upon the said farm and lands and in other improvements thereof. And your orator further sheweth that in or about, &c. the said I. H. informed your orator that he must either pay an advanced rent of —*l.* or deliver up possession of the said premises. And your orator having refused to comply with such unexpected and unjust demand the said I. H. on or about, &c. caused your orator to be served with a notice to quit the said farm on the — day of —. And your orator further sheweth unto your lordship that after he had received the said notice your orator having complained to one of his relations of the great hardship of being obliged to quit his farm after he had expended so much money in improving it, in consequence of the said defendant's assurances that your orator should continue in it during his life, and having in the course of such conversation mentioned his



\*lease from the said E. L. his said relation desired to see that lease, and upon perusing the same read to your orator the proviso therein contained, whereby it appeared that the said lease was not to determine at the end of the first — years without — months previous notice. And your orator further sheweth that he hath since by himself and his agents repeatedly applied to the said I. H. and requested him to deliver up the said agreement of the — day of — to be cancelled and to confirm the said indenture of lease of the — day of — and to return to your orator the land-tax which he hath paid in respect of the said farm since the making of the said agreement, and which he was thereby bound to pay, although he was not liable to pay it by the said indenture of lease; with which just and reasonable requests your orator well hoped that the said I. H. would have complied as in justice and equity he ought to have done. BUT NOW SO IT IS, &c. [see form IV. p. 5.] And the said I. H. in or as of Hilary Term last served your orator with a declaration in ejectment in order to obtain possession of the said premises. And the said defendant sometimes pretends that previously to the making of the said agreement of the — day of — the said defendant had fully explained to your orator that your orator was entitled to hold the said premises under the said indenture of lease until the end of the term of — years therein mentioned, and that your orator was desirous to surrender and determine the said lease. Whereas your orator expressly charges the contrary thereof to be the truth, and that the said defendant never did in any manner explain to your orator or give him to understand that he was entitled to hold the said farm until the end of the said term of — years. And the said defendant well knew at the time of making the said agreement of the — day of — that your orator would not have entered into the same if he had been aware of his rights under the said indenture of lease, and the said defendant for that reason concealed from your orator that he had such rights. And your orator charges that at the time of making the said agreement your orator had not the advice or assistance of any person whatsoever, but acted therein according to the suggestions of the said defendant, supposing he meant to be kind towards him and would deal fairly by him. All which actings, &c. [see form VI. p. 5, *interrogating to the stating and charging parts.*]

Plaintiff discovered the proviso in the lease whereby the lease was not to determine without previous notice.

Applications to defendant to cancel the agreement, to confirm the lease, and repay the land-tax paid by plaintiff.

Defendant commenced an action in ejectment.

Pretence that defendant explained the terms of the lease to plaintiff.

Charge the contrary.

Charge that defendant had no advice.

And that the said defendant may answer the premises; and that the said agreement bearing date the — day of — may be decreed to be delivered up to your orator to be cancelled; and that the said defendant may confirm the said indenture of lease of the — day of —. And that an account may be taken of what your orator has paid for land-tax of the said farm since the making of the said agreement, and that the said defendant may be decreed to repay the same to your orator; and that in the meantime the said defendant may be restrained by the order and injunction of this honorable court from proceeding in the said action of ejectment, and from commencing or prosecuting any other proceedings at law against your orator for recovering possession of the said premises. Prayer.

\*[*And for further relief, see form VIII. p. 5.*] May it please, &c.  
[*see forms No. 1, and 4, p. 6.*]

J. L.

XIX. *Bill to set aside indentures of lease and release which conveyed away an estate absolutely, though they were intended to operate only as a security of a certain sum for money.*(5)

States that plaintiff W. C. being entitled to the premises herein-after mentioned in reversion, subject to the life estate of E. C. his mother, by indentures of lease and release bearing date, &c. the release being made between plaintiff W. C. of the first part, R. W. J. C. and J. S. of the second part; and R. C. and G. R. of the third part, plaintiff, for the considerations and purposes in the said indenture of release mentioned, conveyed the premises after-mentioned to the said R. C. and G. B. upon trust out of the rents and profits or by sale or mortgage of a sufficient part to pay the debts specified, and to re-convey the residue to plaintiff.

That being at that time in embarrassed circumstances, and having a pressing occasion for a sum of money not less than £—— in order to enable him to obtain a lucrative situation which he had in view, plaintiff W. C. applied to the said R. C. to lend him the same, and offered him security of the premises comprised in the aforesaid indentures of lease and release, if he the said R. C. would advance the money to plaintiff W. C. And the said R. C. instead of complying therewith, informed T. R. junior the brother of plaintiff's wife of such offer, and advised him to inform T. R. his father, and to prevail on him to advance or procure the money in order to prevent plaintiff W. C. making an imprudent bargain with strangers to the prejudice of his wife and family, which the said T. R. junior accordingly did. And the said T. R. senior being informed thereof agreed to accommodate plaintiff W. C., but the said T. R. senior not having the money, it was proposed and agreed that he should borrow the same upon his bond from one J. O., and in order to indemnify the said T. R. senior, that plaintiff W. C. should convey to T. R. senior and T. R. junior the aforesaid premises, subject to the life estate of plaintiff's mother, and to the before-mentioned charges made thereon by the above-mentioned indenture of lease.

[ \*68 ]

\*That the said T. R. senior accordingly borrowed the sum of £—— from the said T. O.; and said T. R. senior and T. R. junior by their bond or obligation in writing under their hands and seals became

(5) If a bill is filed to set aside a conveyance on the ground of fraud the court will not on motion order a production of the conveyance. Where a defendant refers to his schedule as containing all deeds, papers, &c. in his custody or power, relating to the matters in question, there the plaintiff is entitled to the inspection of all such deeds, papers, &c. as of course; unless it appears by the description of any particular instrument in the schedule, or by affidavit, that it is evidence not of the title of the plaintiff but of the defendant, or that the plaintiff had otherwise no interest in its production; *Tyler v. Drayton*, 2 Sim. & Stu. 310; and see *Beckford v. Wildman*, 16 Ves. 438; *Taylor v. Milner*, 11 Ves. 41; *Baleh v. Symes*, 1 Turn. 87.

bound to pay the same to the said T. O. That one T. P. H. an attorney was employed by the said T. R. senior to prepare the proper instruments for carrying the said agreement into execution. And plaintiff W. C. having received said £—— said Mr. H. presented to plaintiff two instruments which plaintiff being ignorant of these matters and trusting to the said Mr. H. executed. And the said two instruments are as it is alleged to the purport or effect following (that is to say:) [*stating the same;*] which said indentures are in the custody or power of the defendants hereinafter named or some or one of them.

That the meaning agreement and intention of the parties to the said indenture of release of the —— day of ——, 1792 was, that after payment of the several charges on the premises the residue or surplus should by some other instrument be settled and secured upon plaintiff W. C. and his family, and that the said T. R. senior and T. R. junior were intended only to be trustees as to the same. And the said Mr. H. at the time said indentures of the —— day of —— and —— day of —— 1792 were executed, and at other times informed the parties thereto or some of them, that as the same amounted to an absolute conveyance he would prepare some deed to declare the trusts of the said surplus or to that or the like effect.

That in the month of —— the said T. R. senior departed this life, leaving T. R. junior him surviving, whereby the joint estate in the said premises conveyed by the said indentures of the —— and —— days of —— 1792, survived to the said T. R. junior; and T. R. senior by his will in writing appointed E. R. his executrix, who duly proved the same, and thereby became his personal representative.

That said T. R. junior carried on trade in copartnership with his brother I. R., and that the said T. I. and I. R. having become bankrupts, a commission under, &c. [*stating it in the usual way.*] As in and by, &c.

That no defeasance was executed in the life-time of the said T. R. senior, but that the said T. R. senior bequeathed a legacy of £—— to plaintiff S. C. his daughter, and the said E. R. as a further advancement agreed to give £——. That the aforesaid sum of £—— together with an arrear of interest being due from plaintiff W. C. to the said E. R. as executrix of the said T. R. senior, together with other sums of money borrowed, and it being at that time apprehended that the whole of the interest then due from the plaintiff W. C. was due to the estate of T. R. senior, it was agreed between said E. R., T. R. junior and plaintiff W. C. that they should convey the aforesaid premises to trustees upon the trusts hereinafter mentioned. And by indenture bearing date some time in the year —— plaintiff W. C. said E. R. and T. R. junior, in due form of law conveyed said premises to plaintiffs I. C. and T. W. upon trust to sell the same, to pay the incumbrances charged thereon by the aforesaid indentures of the —— and —— days of —— 1792, to pay the said sum of £—— and \*interest to the said E. R., and to place out the surplus moneys arising therefrom upon government or other securities, and pay the interest and dividends thereto to plaintiff W. C. and

S. his wife during their lives and to the survivor during his or her life, and upon the decease of the survivor the principal to be divided among their children as therein mentioned. As in and by, &c.

That —l. part of the interest due by plaintiff W. C. on the aforesaid sum of —l. was due to the said T. R. junior, the same having been advanced by him to the said T. O. on behalf of plaintiff W. C. but all the principal and the residue of the interest was paid to the said T. O. by the said T. R. senior or the said E. R. his executrix and therefore the said sum of —l. is due to the said defendants the assignees of the estate and effects of the said T. R. junior.

That the title-deeds of the estate were delivered to plaintiff I. C. and are now in his possession; and said defendants the assignees of said T. R. and J. R. insist that the said estate by virtue of the aforesaid conveyances of the — day of — and — day of —, 1792 became the property of the said T. R. senior and T. R. junior for their own benefit. And that the said T. R. junior having survived the said T. R. senior the same estate and premises became vested in him the said T. R. junior for his own benefit. And that by virtue of the aforesaid conveyance made to the said assignees the said estate and premises are now vested in them for the benefit of the creditors seeking relief under the commission. And they insist upon the benefit of the said instrument and have commenced an action of trover against plaintiff I. C. to recover possession of said title-deeds.

That plaintiffs are entitled to have the said deeds of lease and release of the — and — days of — 1792 cancelled, and the said assignees ought not in conscience to proceed in the said action. That plaintiffs have therefore by themselves and their agents applied to the said defendants the assignees to deliver up said deeds to be cancelled and to discontinue the said action, with which reasonable requests they ought to have complied, but they refuse so to do, alleging that the said conveyance is absolute and unconditional, and that it was not the intention of the parties that any deed should be executed either in the nature of a defeazance or of a declaration of trust, but that it was meant that the said T. R. senior and T. R. junior should take the surplus for their own use and benefit.

*Charge* that the said bond debt from T. R. senior and T. R. junior to said I. O. was considered as the debt of plaintiff W. C., and the said T. R. senior enjoined plaintiff W. C. to pay the interest of it regularly, and in the month of — a year's interest amounting to —l. being then due, plaintiff W. C. gave to T. R. junior —l. (which was all he could then raise) towards discharging such interest to the said I. O., and took a receipt from him in the words and figures or to the purport and effect following, that is to say, &c.

And as evidence thereof plaintiffs further charge that the said T. R. junior made an entry in a book kept by him which is in the words and figures or to the purport and effect following, that is to say, &c.

\**Charge* that the book in which the entry is made is in the proper custody of the defendants hereinafter named or one of them; and as further evidence thereof, plaintiffs further charge that plaintiff W. C.

being indebted to Messrs. B. and M. of, &c. in £—— and upwards and having paid £—— and being unable to discharge the rest, they were very urgent, and plaintiff thereupon applied to said T. R. junior for the surplus due to plaintiff under the said indenture of release of the —— day of —— 1792, and said T. R. junior sent to said Messrs. B. and M. or one of them a note in the words, &c. which said note was signed by said T. R. senior and T. R. junior, but said Messrs. B. and M. were dissatisfied by the said security proposed, and insisted on a bond and returned the said note to said T. R. junior and the same is now in the possession, custody or power of the defendants or some or one of them; and plaintiff W. C. being afterwards very much pressed by said Messrs. B. and M. for payment of said debt, and the said T. R. senior being dead, the said E. R. his executrix and the said T. R. junior some time in the month of —— executed a bond conditioned, &c.

*Charge* that the aforesaid memorandum of the said T. R. senior upon the receipt given by the said J. O., the aforesaid entry in the said book of account by the said T. R. junior, and the aforesaid note sent to the said Messrs. B. and M. and the aforesaid bond given to them, amount to a declaration of the trust above mentioned in writing signed by the parties by law enabled to declare such trust.

*Charge* that said T. R. junior upon some or one of his examinations before the commissioners of bankrupt explained the above circumstances in the presence of the assignees, notwithstanding which they still insist upon the said conveyance by the said indentures of the —— and —— days of —— 1792 and upon proceedings in their said action against plaintiff I. C. All which actings, &c. [see form VI. p. 5, *interrogating to the stating and charging parts.*]

That the indentures of the —— and —— days of —— 1792 may be cancelled, and that the said defendants the assignees of the estate and effects of the said bankrupts T. and T. R. may be enjoined from proceeding in the said action against plaintiff I. C., and from commencing or prosecuting any other action against any other of the plaintiffs in respect of any of the matters aforesaid. [*And for further relief, see form VIII. p. 6.*] May it please, &c. [see forms No. 1, and 4, p. 6.]

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\*XX. *Bill by heir at law to set aside a surrender of copyhold land and a will of real estate, as having been obtained from the plaintiff's grand-father in extreme illness, when he was incapable of understanding the effect thereof.—Praying that the surrender may be declared void, or that the surrenderee may be declared to be a trustee for the plaintiff, and may be decreed to surrender the premises to him, and account for the rents,—that an issue may be directed to try the validity of the will, and if found against it, that the same may be cancelled, and the title-deeds delivered to the plaintiff—an account taken of the rents received by the defendants, also of the deceased's personal estate, debts, &c. and for pay-*

[ \*71 ]

*ment out of the personal estate of a mortgage charged upon the copyhold premises, and that plaintiff may be paid one-sixth of the clear residue;—or, if the will is valid, that plaintiff may be paid such share as he is entitled to under the same.*

In the Exchequer.

To, &c.

Plaintiff's  
grand-father  
attacked with  
the palsy.

His death.

Marriage of  
the defend-  
ants M. G. and  
W. J. with  
deceased's  
daughters.

Plaintiff, his  
heir at law.

W. J. and M.  
G. prepared a  
surrender of  
the copyhold  
premises,

[ \*72 ]

and guided  
deceased's  
hand to make  
a mark to the  
paper, deces-  
ed being in

Humbly complaining sheweth unto your honors your orator S. J. of, &c. debtor and accountant, &c. That S. J. your orator's father died in the life-time of his father S. J. the elder your orator's grand-father, and that the said S. J. the elder being of the age of — years and seised to him and his heirs according to the custom of the manor of K. in the county of N. of and in, &c. &c. and also seised of or entitled to other real estates he the said S. J. the elder was on or about Sunday the — day of — afflicted with a violent stroke of the palsy, which deprived him of the use of his limbs and also of his speech and very much weakened and deranged his mental faculties, and the said S. J. the elder departed this life on or about the — day of — following having continued from the time of his attack until his death in such state of body and mind as aforesaid. And your orator further sheweth unto your honors that M. G. and W. J. (the defendants hereinafter named) had intermarried with the two daughters of the said S. J. the elder, and that the said two daughters of your orator's grand-father were the only children of the said S. J. the elder living at the time of his decease, and that your orator being the only son of his father became and was upon the death of the said S. J. the elder his heir at law. And your orator further sheweth unto your honors that at the time the said S. J. the elder was afflicted with such paralytic stroke as aforesaid, the said M. G. and his wife resided in the house of the said S. J. the elder, and immediately thereupon the said M. G. sent for the said W. J. who resided in the same village of K. aforesaid; and the said W. J. and the said M. G. having been informed by E. S. of, &c. surgeon and apothecary who attended for the purpose of medical assistance to the said S. J. the elder, that the said S. J. was not likely to recover from the said attack, the said W. J. and M. G. prepared a written paper purporting to be a surrender of the copyhold premises aforesaid with the appurtenances into the hands of J. G. and J. R. third boroughs of the said manor of K. to the use and behoof of the said W. J. his heirs and assigns for ever. As in and by, &c. \*And your orator further sheweth unto your honors that the said W. J. and M. G. on the day after the said S. J. the elder had been so afflicted with such paralytic stroke as aforesaid caused the said J. G. and J. R. to come to the house of the said S. J. and then and there in their presence guided the hand of the said S. J. to make a mark to the written paper purporting to be such surrender as aforesaid, the said S. J. the elder who had been accustomed to write a fair and good hand being at the time such mark was so made to the said paper in his bed in the extremity of illness and incapable of

writing or of speaking intelligibly and utterly ignorant of or unable to comprehend the contents of the paper which he was so made to execute; and the said M. G. and W. J. then well knowing or believing that the said S. J. was in imminent danger of death. And your orator further sheweth unto your honors that after the said S. J. had been made to execute the said surrender in manner aforesaid, the said W. J. and M. G. instructed W. M. who was a school-master in the village of, &c. to prepare a written paper purporting to be the will of the said S. J. the elder whereby it was stated that the said S. J. the elder gave and devised, &c. As in and by, &c. And your orator further sheweth unto your honors that on or about the — day of — being the sixth day from that on which the said S. J. the elder was afflicted with such paralytic stroke as aforesaid and the day before his death the said W. J. and M. G. caused three persons to attend as witnesses at the house of the said S. J. and in their presence guided the hand of the said S. J. to make a mark to the said written paper purporting to be a will, the said S. J. then being in his bed and unable to write or to speak so as to be understood, and ignorant or incapable of comprehending the contents of the said written paper and in the extremity of illness. And your orator further sheweth unto your honors that after the death of the said S. J. the elder, the said M. G. and W. J. caused the first mentioned paper signed by the mark of the said S. J. as aforesaid to be presented to the jury at a court of the said manor of K. as a surrender by the said S. J. of the said one-fourth of one yardland containing about 40 acres of copyhold land and by virtue thereof the said W. J. was afterwards admitted thereto to hold the same to him and his heirs according to the custom of the said manor, and the said W. J. hath from the death of the said S. J. been and now is in the possession of the said one-fourth of one yardland copyhold land or in the receipt of the rents and profits thereof, and hath divided the said rents and profits with the said M. G. or hath otherwise made to the said M. G. some compensation for assisting him in such fraud practised upon the said S. J. the elder as aforesaid. And your orator further sheweth unto your honors that upon the death of the said S. J. the elder the said W. J. and M. G. also entered into the possession of the said copyhold house and premises at K. aforesaid and of all other the real estate of the said S. J. the elder or into the receipt of the rents and profits thereof, and continued in such possession or receipt until your orator attained his age of twenty-one years which happened on or about the — day of —. And the said W. J. and M. G. during the minority of your orator applied but a very \*small part of the profits of the said house and other estates in the education or for the use of your orator, and the rest thereof they applied as they pretend pursuant to the trusts of the said pretended will of the said S. J. the elder. And your orator further sheweth unto your honors that upon the death of the said S. J. the elder the said W. J. and M. G. possessed themselves of the personal estate and effects of the said S. J. the elder to a very considerable amount under pretence that the said S. J. the elder had made a valid and effectual will of such personal estate and had appointed the said W.

imminent danger of death and unable to write or speak.

A paper-writing purporting to be a will prepared by a village school-master,

and executed in the presence of three witnesses.

W. J. admitted to the copyhold land, and has since continued in possession.

W. J. and M. G. entered into possession of all the other real estate,

[ \*73 ]

and during the plaintiff's minority applied only a small part of the profits for his use.

They also possessed themselves of

the deceased's personal estate and of all his title-deeds.

That deceased had mortgaged the copyhold premises in which he resided, which mortgage remains charged thereon.

M. G. and W. J. in right of their wives entitled each to one-third of deceased's personal estate, plaintiff and his sister being entitled to the other one-third in equal moieties.

The alleged surrender and will having been obtained by fraud, plaintiff became entitled as deceased's heir at law to all the copyhold and real estates.

Applications to the defendants W. J. and M. G.

[ \*74 ]

Pretence that the alleged surrender and will were prepared by the

J. and M. G. the executors thereof, and the said W. J. and M. G. have also possessed themselves of all and every the books and papers of the said S. J. the elder and of the title deeds of his real and other estates. And your orator further sheweth unto your honors that the said S. J. the elder in his life-time mortgaged the said copyhold house and premises in which he resided at K. for the sum of £—— and that the said mortgage remained charged thereon at the death of the said S. J. the elder and still remains charged thereon, not having been discharged and satisfied out of the personal estate of the said S. J. the elder by the said W. J. and M. G. as it ought to have been. And your orator further sheweth that the said M. J. the wife of the said W. J. and A. G. the wife of the said M. G. were the only surviving children of the said S. J. the elder at the time of his death, and your orator and his sister the aforesaid E. J. were at the time of the death of the said S. J. the elder the only surviving children of any deceased child of the said S. J. the elder, and that the said M. J. and A. G. or their said husbands in their rights, were upon the death of the said S. J. the elder if he died intestate as to his personal estate entitled each to one third of the residue of such estate after payment of his funeral expenses and debts, and that your orator and his said sister as representing their deceased parent were entitled to the other one third of such residuary estate in equal moieties. And your orator further sheweth unto your honors, that inasmuch as the said pretended surrender of the said one-fourth of one yardland copyhold land by the said S. J. the elder and also the said pretended will of the said S. J. the elder, were made and executed by such fraud and practice of the said M. J. and M. G. as hereinbefore stated, the said copyhold premises and all other the real estate of the said S. J. the elder upon his death descended to and became vested in your orator as his heir at law. And your orator hath made frequent applications to the said W. J. and M. G. to deliver up the possession of the said copyhold and other real estates to your orator and to come to a just and true account with him for the rents and profits thereof respectively which have been received by them or either of them since the death of the said S. J. the elder and also out of the personal estate of S. J. the elder to satisfy and discharge the said mortgage for £——. And your orator hath also requested them to come to a just and true account with your orator for his one-sixth share of the residuary personal estate of the said S. J. the elder, or if it shall appear that the said S. J. the elder made any valid or effectual will of his personal estate and that the said W. J. and M. G. are the \*executors thereof, then that the said defendants would account with your orator for such part or share of the personal estate of the said S. J. the elder as your orator should be entitled to under such will; with which just and reasonable requests your orator well hoped the said W. J. and M. G. would respectively have complied as in justice and equity they ought to have done. BUT NOW SO IT IS, &c. [see form 4, p. 5.] And the said W. J. and M. G. pretend that the said surrender and the said pretended will were prepared by the express direction of the said S. J. the elder and from his own notion and not from the instructions or by the suggestions of the said defendants or either of



them, and that after the same were prepared he read the same over or the same were read over to him faithfully previously to his execution thereof respectively, and that he executed the same respectively of his own notion and not by the influence or the compulsion of the said defendants or either of them or by their contrivance, but with full knowledge and clear apprehension of the contents and effects thereof. Whereas your orator expressly charges that at the time the said instruments were respectively prepared the said S. J. the elder had not power of body or mind to converse or decide upon matters of business or to express himself intelligibly upon any subject of business and that the said instruments were either prepared by the said defendants or by their direction or at their suggestion and not upon the notion or suggestion of the said S. J. the elder. And that after the same were respectively prepared and previously to the execution thereof the said S. J. the elder was utterly incapable of reading them, and that the same previously to the execution thereof were never read to or in the presence of the said S. J. the elder, or that if the same or either of them were so read they were read falsely and unfaithfully and as and for instruments of a different purport and effect, as the said S. J. the elder had not at the time or times of such reading respectively power of body or mind to hear or apprehend the contents and effects thereof. And your orator further charges that at the times of the execution thereof respectively in manner aforesaid the said S. J. the elder had not power of mind to know and comprehend the contents and effect thereof nor did he know or comprehend the contents and effect thereof, and that the same were not executed from his own notion and of his own free will but by the suggestion compulsion or contrivance of the said defendants or one of them. And your orator further charges that the said E. S. who attended the said S. J. the elder in his illness and the said W. M. who drew the said pretended will and also the said J. G. and J. R. who attended as aforesaid to receive the said pretended surrender and the subscribing witnesses to the said pretended will or some of them represented to the said defendants that the said S. J. the elder was not in a fit state of mind or body to act in matters of business and remonstrated with the said defendants upon the impropriety of such instruments being prepared or executed. And the said defendants also pretend that the S. J. the elder before he was afflicted with such paralytic stroke as aforesaid had contracted and agreed with the said W. J. to sell to him the said copyhold premises \*at or for the price of £—— and that the said W. J. had actually before such illness paid the said sum of money to the said S. J. the elder for and in respect of such surrender. Whereas your orator charges that no such contract or agreement ever was made by the said S. J. the elder, nor did the said W. J. ever pay any sum of money whatsoever to the said S. J. the elder in respect of the purchase of the said copyhold premises; and as evidence thereof your orator charges that the said S. J. the elder never consulted with any professional or other person as to the value of the said premises, and no contract or agreement for the sale of the said copyhold premises to the said W. J. was ever reduced into writing or signed by the said

direction of the deceased, and that he executed the same of his own free will.

Charge the contrary, that deceased was unable to converse upon matters of business, and was unable to read.

That deceased was unable to understand the effect thereof.

That the surgeon and other persons remonstrated upon the impropriety of such instruments being executed.

Pretence that the deceased had agreed to sell the copyhold premises to W. J.,

[ \*75 ]

and that he paid the consideration money.

Charge the contrary.

Evidence in support of such charge.

Pretence that the copyhold premises passed by the will, and that the plaintiff is not entitled to have the mortgage thereon discharged out of the personal estate.  
Prayer.

S. J. the elder, nor is any memorandum of such agreement or any entry or writing respecting the same or the receipt of any sum of money in respect thereof to be found in the books or amongst the papers of the said S. J. the elder in his hand-writing. And your orator further charges that no memorandum or entry respecting such agreement nor any entry of any such payment having been made for the purchase-money thereof or any part thereof is to be found in the books of the said W. J. except such memorandum or entry as the said W. J. may have made therein since the said S. J. the elder was afflicted with such paralytic stroke as aforesaid. And the said defendant E. J. the sister of your orator pretends that the said copyhold house with the appurtenances at K. was well devised by the said S. J. by such pretended will as aforesaid, and that your orator is not entitled to have the mortgage thereon discharged and satisfied out of the personal estate of the said S. J. the elder. All which actings, &c. [*see form VI. p. 5, interrogating to the stating and charging parts.*] And that the said defendants may answer the premises. And that it may be declared that the said pretended surrender of the said one-fourth of the said yardland of copyhold land by the said S. J. the elder is void and of no effect, and that the same upon the death of the said S. J. the elder descended to your orator as his heir at law, or that the said W. J. by the said surrender or by his subsequent admission to the said copyhold premises became and is a trustee thereof for your orator as such heir at law; and that the said W. J. may be decreed to deliver up the said pretended surrender to be cancelled, and also to deliver up the possession of the said one-fourth of one yardland of the said copyhold land to your orator, and if necessary to surrender the said copyhold land to the use of your orator and his heirs, and to come to an account for the rents and profits thereof received by the said W. J. or by his order or for his use since the death of the said S. J. the elder, and to pay over to your orator what shall be found due from him upon the taking of such account; And that an issue may be directed to try whether the freehold estates of the said S. J. the elder were well devised by him or descended to your orator as his heir at law, and if it shall be found that the said last-mentioned estates descended to your orator as the heir at law of the said S. J. the elder then that the said W. J. and M. G. may be directed to deliver up the said pretended will to your orator to be cancelled, and also to deliver up to your orator all the deeds and other writings relating to the said estates, and to come to an account for the rents and profits of the said estates which have since the death of the said S. J. the elder been received by them or either of them or by their or either of their order or for their or either of their use, and to pay over to your orator what shall be found due to him upon the taking of such account. And that an account may also be taken of the personal estate and effects of the said S. J. the elder come to the hands of the said defendants or either of them, and also an account of his funeral expenses and debts; and that the said defendants may be directed in the first place by and out of such personal estate to satisfy and pay the said mortgage for £—— charged on the said

[ \*76 ]

copyhold estate at K. and all interest due thereon; and if it shall appear that the said S. J. the elder died intestate, then that the said defendants may be directed to pay over to your orator one-sixth part of the clear residue of the personal estate of the said S. J. the elder or if it shall appear that the said S. J. made any valid will of his personal estate then that the said defendants may be decreed to pay to your orator such part or share thereof as he shall be entitled to by the provisions of such will. [*And for further relief, see form VIII. p. 5.*] May it please, &c. [*See form No. 1, p. 6.*]

W. J.

XXI. *Bill by a widow to have a bond delivered up, which her husband had given to his father, charging that it was meant as a security for a return of part of the fortune which defendant had pretended to give him on his marriage, and for an injunction to restrain the defendant from proceeding in an action commenced by him on the bond.*(6)

States that on, &c. a marriage was in contemplation and intended to be solemnized between plaintiff and D. L.; that it was thereupon proposed and agreed between the friends of plaintiff and defendant M. L. the father of D. L. that the defendant should convey and assure unto D. L. certain lands, &c. of which he was then seised in fee, and which together with plaintiff's real and personal estate should be settled in manner agreed upon between the said parties.

That in pursuance of said agreement certain lands of defendant together with plaintiff's real and personal estate, were by indentures of lease and release bearing date, &c. settled to the uses, upon the trusts, and in manner in that behalf agreed upon between the parties.

That at the time of the execution of the settlement D. L. was prevailed upon by defendant his father to execute some instrument \*in writing which plaintiff hath since discovered to be a bond or obligation in writing dated, &c. [*stating it.*]

[ \*77 ]

That D. L. never received or was paid any consideration whatsoever from defendant for the aforesaid instrument or bond or for executing same, but the same was executed by him as an inducement for defendant to consent to make such settlement as aforesaid of his said estates, and in consequence of some private agreement made between them upon the occasion of the said marriage, defendant having required and insisted upon having the same executed as the terms and conditions on which he would consent and agree to make such settlement of his estate as aforesaid in favor of his said son and plaintiff,

(6) Every private underhand agreement or treaty, infringing upon the open and public agreement of marriage, is considered as fraudulent and void. Where a son or a brother privately gives a bond to refund any part of his marriage portion, it will be decreed to be delivered up; *Redman v. Redman*, 1 Vern. 348; *Gale v. Lindo*, *ibid.* 475; *Peton v. Bladwell*, *ibid.* 240; *Turton v. Turton*, 1 P. Wms. 496.

and said bond was moreover given and executed by D. L. without the knowledge or privity of plaintiff or any of her relations or friends from whom the same was industriously and designedly concealed.

That the marriage was had and solemnized; that D. L. died leaving plaintiff his widow who hath duly administered.

That the aforesaid bond having been given by D. L. upon the occasion aforesaid and without any good or valuable consideration, plaintiff hoped no claim or demand would have been made on the estate of D. L. in respect thereof. BUT NOW SO IT IS, &c. [*see form 1V. p. 5.*] And the said defendant

*Pretends* that the said bond was executed by D. L. for securing the repayment of the sum of £—— to defendant, and that such sum was by him actually lent and advanced to D. L. or that said bond was given for securing the payment of some debt or sums of money actually and *bona fide* due from D. L. to defendant or for some other good and valuable consideration, but the particulars of which such debts or consideration consisted or when where or in whose presence such consideration was given or paid, or how or in what manner such debt arose or became due, defendant refuses to discover or set forth.

*Charge the contrary*, and that defendant never paid or gave nor did D. L. ever receive any consideration whatsoever for the said bond, nor was D. L. at the time of the execution thereof indebted unto defendant in any sum of money whatsoever.

*Charge* that the bond was extorted from D. L. and he was prevailed upon to execute the same upon the account of the said marriage or the execution of the said settlement, and some short time previously to and in contemplation of said marriage with plaintiff as a security for and in order to compel him to repay to defendant the sum of £—— in part of the fortune which defendant had pretended to give his son on his said marriage, and the same was done with a view to deceive and impose upon plaintiff and her friends who would not (as defendant well knows and believes) have consented to such marriage, had they known suspected or believed that defendant would not give his said son so large a fortune as by the said settlement he pretended to give to him, or that any part of such fortune was to be repaid to him or any security to be by him taken from the said D. L. for the re-payment of the same or any part thereof, and therefore said bond

[ \*78 ]

\*was a fraud upon the agreement made between the parties upon the occasion of the said marriage.

*Charge* that defendant was so well convinced after the said bond was given that he could not support any claim or demand against D. L. in respect thereof, that from the time of the date thereof until the time of the death of D. L. defendant never called upon him to pay any sum of money whatsoever in discharge either of the principal or interest due thereon, and that it was not till after the death of D. L. that he made any demand on plaintiff of the money pretended to be due on said bond, when defendant imagined it would be difficult to controvert such claim, and *charge* that after he had made such demand on plaintiff as aforesaid and which was on or about, &c. on being informed by plaintiff that for the reasons afore-

said amongst others she did not consider herself liable to pay or that she should be justified in paying such debt, defendant acquiesced therein and never made any demand upon plaintiff, or took any measures to recover the same until on or about, &c.; and therefore plaintiff insists that in case the said bond had been originally good and valid and given for a good and valuable consideration (but which plaintiff doth not admit,) said bond ought at this distance of time, without payment of or demand for principal or interest secured thereby, to be presumed to be satisfied, and that defendant ought not now to be at liberty to set up the same or to avail himself thereof.

*Charge* that defendant would not have neglected for so long a time to call for or require payment of said bond or of the money secured thereby had he imagined that he could have compelled the payment thereof.

*Charge* that defendant was in the life-time of D. L. and since his decease frequently in want and often distressed for money; and therefore for the reasons and under the circumstances aforesaid plaintiff is advised and insists that said bond ought to be delivered up to be cancelled.

But defendant insists on the contrary and he hath lately commenced an action at law against plaintiff as the administratrix and personal representative of D. L. in his Majesty's Court of King's Bench at Westminster, on the aforesaid bond, and he threatens to proceed to judgment and execution therein well knowing that plaintiff cannot make a good defence at law to the said action.

*Note.* *The prayer will be, that the bond shall be delivered up and for an injunction to stay proceedings at law.*

\*XXII. *Bill against the executors of the obligor to have a bond delivered up to be cancelled, which had been given to secure the consideration money for the purchase of their testator's supposed interest in certain farms, for the residue of a term of years, it afterwards appearing that he was only tenant from year to year, and plaintiffs having received notice to quit.—Praying also for an injunction to restrain the defendants from proceeding in an action commenced by them on the bond.*

[ \*79 ]

Humbly complaining show unto your lordship your orators I. L. of, &c. farmer and I. L. junior of, &c. the son of your orator I. L. That T. C. late of, &c. but now deceased and who was a coach-master and also a farmer did in or about the beginning of the year ——— dispose of part of his business as a coach-master and also his stage-horses to your orator I. L. junior for the sum of £——. And your orators further show that the said T. C. then occupied ——— farms at, &c. which were the property of F. S., and the said T. C. represented to your said orator that he was entitled to the said ——— farms for the residue of a term of ——— years commencing as to the

That deceased sold part of his business to plaintiff I. L. junior; and represented that he was entitled to certain farms for the

residue of a term of years, and proposed to sell his interest to said plaintiff, who agreed to purchase the same.

Bond given for securing the purchase-money.

Circumstances attending the preparing and execution of the bond.

Plaintiffs entered into the occupation of the farms.

Death of vendor, his will, and probate thereof.

[ \*80 ]

Plaintiff served with a notice to quit.

Application to the executors, the defendants, to deliver up the bond,

meadow-land at Christmas — and as to the rest of the premises at Candlemas — at the annual rent of £—. And the said T. C. proposed to sell his said interest in the said — farms to your said orator for the residue of the said term of — years at the price of £—. And your orators further show that your said orator I. L. junior thereupon agreed with the said T. C. to purchase his said interest in the said — farms for the said sum of £—, and your said orator not being prepared to pay the money it was further agreed between them that your orator I. L. should join your orator I. L. junior in a bond for securing the said sum of £— to the said T. C. And your orators further show that Mr. H. the attorney of the said T. C. having by his directions prepared a common money bond from your orators to him the said T. C. for the payment of the said sum of £— and interest your orator I. L. objected thereto and desired to have the transaction stated in the bond, to which the said T. C. answered that it mattered nothing between them, but your said orator not being satisfied with such answer desired the said Mr. H. to make a minute in writing of the consideration for which the bond was really given as aforesaid, and the said Mr. H. accordingly made such minute in writing with the consent of the said T. C. and then read the same over to your orators and the said T. C. who upon hearing it observed that it was perfectly right and your orators then executed the said bond which bears date in or about the month of —. And your orators further show unto your lordship that upon the execution of the said bond your orators entered into the occupation of the said — farms and have ever since occupied the same, but the said T. C. never made or executed any actual assignment of his said pretended interest therein to your orators or either of them. And your orators further show that the said T. C. some time in the month of — departed this life having first duly made and published his last will and testament in writing and thereof \*appointed E. T. of, &c. and A. G. of, &c. (the defendants hereinafter named) executors who thereupon duly proved the same in the proper Ecclesiastical Court and undertook the executorship thereof, and thereby became his legal personal representatives. And your orators further show that in the month of — last the said E. T. as Steward of the said F. S. served your orators with a notice to quit the said — farms at the end of the then current year in-sisting as the fact appears to be that the said T. C. was only tenant from year to year of the said — farms and had no power to dispose of the same to your orators for the residue of the said term of — years. And your orators further show that the said bond for £— and interest having therefore been given by your orators to the said T. C. without consideration and by reason of the false representations of the said T. C. that he had such interest in the said — farms as aforesaid, your orators have by themselves and their agents repeatedly applied to the said E. T. and A. G. and have requested them to deliver up to your orators the aforesaid bond to be cancelled. And your orators well hoped that the said E. T. and A. G. would have complied with such your orators' reasonable requests as in justice and equity they ought to have done. BUT NOW SO IT IS, &c.

[see form IV. p. 5,] they refuse so to do; And although the said defendants well know that the said bond was given by your orators as a consideration for the supposed interest of the said T. C. in the said — farms for the residue of the said term of — years, yet defendants have lately commenced an action at law in his Majesty's Court of K. B. by special *testatum capias* upon the said bond and have caused your orators to be held to bail thereon, and the said defendants threaten and intend to proceed to judgment and execution on the said bond unless they are restrained therefrom by the injunction of this honorable court. To THE END therefore, &c. [see form VI. p. 5, *interrogating the statements.*]

and refusal by them.

Defendants have commenced an action on the bond against the plaintiffs.

*Prayer for the bond to be delivered up, and an injunction to restrain proceedings at law.*

J. L.

XXIII. *Bill by sureties in a bond (which had been executed previously to an award being made) at the suggestion of the arbitrators, by one partner to another, for indemnifying him against the partnership debts, and for securing payment of a sum of money) —against the obligee, and the assignees of the partner the obligor bankrupt, praying to have the bond delivered up to be cancelled, and for an injunction to restrain proceedings at law, on the ground of the award being void.*

To, &c.

Humbly complaining show unto your lordship your orators P. B. of, &c. and C. M. of, &c. That W. W. of, &c., and J. B. of, &c. chemists and druggists, did in or about the month of — carry on the trade or mystery of chemists and druggists together as partners \*under certain articles of agreement theretofore made between them and bearing date on or about the — day of —, whereby they agreed to become co-partners in the said trade or mystery of chemists and druggists for the term of twenty-one years from the day of the date thereof if they should so long live, but determinable nevertheless by either of them upon the first seven or first fourteen years of the said term of twenty-one years, upon under and subject to certain terms and conditions in the said articles of agreement expressed. And your orators further show unto your lordship that certain differences and disputes having arisen between the said W. W. and J. B. it was agreed by and between them to refer their said differences and disputes to arbitration; and thereupon the said R. W. and J. B. each duly made executed and delivered to the other a certain bond or obligation in writing bearing date on or about — whereby they respectively bound themselves their heirs executors and administrators the one to the other of them in the penal sum of £—, with a condition to each of the said bonds respectively underwritten, whereby it was provided that if the obligor of such bond his heirs executors or administrators did and should, &c. [*stating the*

W. W. and J. B. carried on business in partnership under certain articles.

[ \*81 ]

Disputes between them.

Reference to arbitration.

Arbitrators not agreeing on an award, an umpire appointed.

Difficulty suggested respecting security from W. W. to perform the award.

Applications to plaintiffs to become sureties with him.

Bond executed by plaintiffs and W. W.

[ \*82 ]

Award made by the umpire.

Circumstances alleged tending to show that the award is void.

*condition of the bond.*] As by the said bonds or obligation reference being thereunto had when produced to this honorable court will more fully appear. And your orators further show unto your lordship that the said R. W. and B. S. [*the two arbitrators*] proceeded on the said arbitration, but not agreeing to make an award therein, did on or about — under the power by the said arbitration bonds in that behalf given nominate and appoint R. F. of, &c. an umpire between them respectively of the matters so referred and submitted as aforesaid. And your orators further show unto your lordship that in the course of the investigation of the aforesaid matters it was suggested to the said W. W. by the said arbitrators or one of them that if the said arbitrators should determine upon a dissolution of the aforesaid partnership between him the said W. W. and the said J. B., and should award that the said W. W. should continue in the business and pay and secure all debts owing by or to the said partnership concern, and should also pay a certain sum of money to the said J. B., a difficulty would arise for want of a sufficient security to the said J. B. against the outstanding debts and claims upon the co-partnership and for the due payment of the sum of money which might be so awarded to him as aforesaid. And your orators further show unto your lordship that the said W. W. in order to obviate and remove the said difficulty applied to your orators and requested them to join him as sureties in the bond to the said J. B. for that purpose and your orators having consented thereto they and the said W. W. did, by a certain bond and obligation sealed with their respective seals and bearing date on or about —, jointly and severally bind themselves and each of their heirs executors and administrators for the payment of the sum of £—— to the said J. B., with a condition thereunder written, whereby after reciting the said arbitration bonds and the appointment of the said R. F. as umpire as aforesaid and the difficulty suggested as aforesaid to the said W. W. it was provided that, &c. As in and by the last-mentioned bond or obligation \*reference, &c. And your orators further show unto your lordship that the said R. F. did on or about the said — sign a certain instrument in writing purporting to be his award in the matters aforesaid whereby after reciting the purport and effect of the said arbitration bonds and the appointment of the said R. F. to be such umpire as aforesaid, and reciting further that under such reference, &c. [*stating that part of the award which bears upon the case.*] As in and by the said award, &c. And your orators further show unto your lordship that although it is in the said award recited that the said R. F. had taken upon himself the burthen of the said reference and submission and had deliberately heard and considered the allegations and proofs of the said W. W. and J. B. respectively and had perused examined and considered their account, yet in truth the said R. F. did not in any manner enter upon the subject of the said reference, nor heard or considered any allegations or proofs of either of the parties, nor ever in any manner perused examined or considered any accounts relating to the said matters in difference, nor ever exercised any judgment whatever as to any of the said matters, but the said award was prepared by the instructions of the said P.



S. alone without any interference whatever on the part of the said R. F. who was prevailed upon to sign it by being assured that his signature thereto was a mere matter of form. And your orators further show unto your lordship that since the making of the said award a commission of bankrupt under the great seal of Great Britain hath been awarded and issued against the said W. W. who hath been thereupon duly found and declared bankrupt; and the usual assignment of his estate hath been duly made to A. B. and C. D. (defendants hereinafter named) who were duly chosen by the creditors as the assignees of the said bankrupt's estate. And your orators further show unto your lordship that the said award so made as aforesaid being utterly void as against your orators by reason that the same was signed by the said R. F. under the circumstances hereinafore stated, your orators have by themselves and their agents applied to the said J. B. and requested him to deliver up to your orators the bond in which they had joined as the sureties of the said W. W. as aforesaid to be cancelled. And your orators well hoped that the said J. B. would have complied with such your orators' reasonable requests as in justice and equity he ought to have done. BUT NOW SO IT IS may it please your lordship that the said J. B. combining and confederating with the said A. B. and C. D. and with divers other persons, &c. [see form IV. p. 5] the said J. B. refuses so to do; and the said W. W. not having paid to the said J. B. the said several sums mentioned in the said award nor having discharged the debts of the said co-partnership the said J. B. threatens and intends to commence an action at law against your orators upon their said bond. And your orators charge that the said A. B. and C. D. the assignees of the said W. W. refuse to join your orators in this suit. All which actings, &c. [See form VI. p. 5, *interrogating to the stating and charging parts.*]

Commission  
of bankrupt  
against W. W.

Applications  
to the obligee  
to deliver up  
the bond.

Refusals so to  
do, and an ac-  
tion threat-  
ened against  
plaintiffs.

The assignees  
refuse to join  
plaintiffs.

Prayer.

And that the said bond so as aforesaid entered into by your orators and the said W. W. may be delivered up to your orators to be cancelled, or may be declared void so far as the same respects your orators. And that in the mean time the said J. B. may be restrained by the order and injunction of this honorable court from commencing prosecuting or proceeding in any action or actions at law against your orators or either of them in respect of the said bond. [And for further relief, see form VIII. p. 5, and 6.] May it please, &c. [See forms No. 1, and 4, p. 6.]

[ \*83 ]

J. L.

*Pray subpoena and injunction against J. B.  
and subpoena against A. B. and C. D.*

\*XXIV. *Prayer of a bill to set aside a lease which had been granted upon the surrender of a former lease, and for an account of earth and gravel dug up beyond the quantity allowed under the old lease; plaintiff offering to grant a lease, to continue for such term as was granted by the old lease, and to confirm any underleases granted by the defendant;—Praying also to have an agreement and bond delivered up, and for costs against the defendants;—Praying also in the alternative, that if the new lease ought not to be set aside, then that the same may be rectified, and for an injunction to restrain the defendants from digging gravel or committing waste, or granting underleases.*(7)

And that the said lease so executed by the said L. M. as aforesaid may be set aside as having been obtained by fraud and imposition and that the said C. G. may be decreed to deliver up the same to be cancelled and that he may be decreed to account with *plaintiffs* for all the earth and gravel dug up and taken by him from the said premises beyond the quantity which he was entitled to dig under the old lease and for the profits made by him by such earth and gravel *plaintiffs* hereby offering to deliver up the counterpart of the said lease to the said C. G. and also offering to grant a new lease to the said C. G. for such term as would be still subsisting in the old lease, if the same had not been surrendered, upon the same terms as were contained in such old lease with respect to such part of the said term, and to allow to the said C. G. in account the surplus rent which has been paid by him under the new lease, beyond the rent which was reserved by the old lease, and also so far as the court shall think fit to direct, to confirm all the leases underleases and assignments made by the said C. G. at any time before *plaintiffs'* bill of complaint in this cause was filed, and to make all reasonable allowances to the said C. G. for moneys laid out upon the said premises, and generally to submit to such terms as the court shall be pleased to impose. And that the said A. L. may be decreed to deliver up the said agreement of the — day of — to the *plaintiffs*, and to deliver up the said bond executed by the said C. G. to him; and that the said A. L. as well as the said C. G. may be decreed to be answerable for and to

[ \*84 ] \*pay all the costs of this suit and of setting aside the present lease and granting the new one, OR if this court should be of opinion that the said lease ought not to be set aside, then that the same may be reformed and rectified by omitting the covenant contained in the said lease with respect to the apportionment of rent, and by introducing a covenant for reserving to the owner of the reversion of the property comprised in the said lease, the right of having all underleases and assignments of the said property prepared by his own solicitors. And that the said C. G. may be restrained by injunction of this court from digging clay and making bricks upon the said land, and from digging and removing gravel from the same; and from committing

(7) See *Harris v. Tremeneere*, 15 Ves. 34, 2d edit.; and the cases referred to in the notes; *Lord Selsey v. Rhoades*, 2 Sim. & Stu. 41.

any other waste or spoil in or about the said demised premises, and from granting or making and contracting to grant and make any leases underleases or assignments of any part of the said demised premises. [And for further relief.]

XXV. *Pretences and charges in a bill to set aside an assignment of effects for the benefit of relations, as having been made without consideration, and when the assignor was considerably in debt.*

And the said defendant sometimes pretends that he hath not since the death of the said J. J. his late father deceased, possessed any personal estate or effects which were belonging to him at the time of his death, he the said J. J. not being possessed of or entitled unto any personal estate or effects whatsoever; for that the said J. J. sometime before his death and in and about the year — executed some deed or deeds, instrument or instruments in writing whereby he assigned unto the said W. J. or to some other person or persons in trust for him or for his use or benefit or in trust for or for the use or benefit of some friend or relation of him the said J. J. absolutely and for a good and valuable consideration, all the personal estate and effects whereof he was possessed or unto which he was entitled, and that by virtue of the said assignment the said W. J. or such other person or persons in whose favor such assignment is pretended to have been made became well entitled thereto, and the same were accordingly delivered unto him or them by the said J. J. in his lifetime, but the particulars of such assignment or to whom the same was made the confederate W. J. refuses to discover. Whereas your orator charges the contrary thereof to be true. And that the said confederate ought to admit assets, &c. or account, &c. And plaintiff further charges that in case the said J. J. did really execute any such deed or deeds instrument or instruments in writing as are hereinbefore pretended to have been executed by him, and did thereupon deliver such personal estate and effects to the said W. J. or any other person or persons (but which plaintiffs do not admit,) the said J. J. was at the time of the date and execution of the said pretended deeds indebted to several persons to a considerable amount, and such deed or deeds instrument or instruments were or was executed \*by him, and such personal estate and effects delivered by him with a view and for the sole purpose of defrauding his creditors and to elude the payment of the debts by him contracted, and such deed or deeds instrument or instruments, and the delivery of such effects, was and were voluntary and fraudulent, and without any valuable consideration whatsoever really and *bona fide* paid by the said W. J. or the said person or persons in whose favor the same are pretended to have been made, but the same was or were made to him or them in trust for the said J. J. or with intent to screen his estate and effects from his creditors or some or one of them, and to prevent the same from being applied in payment and satisfaction thereof.

Pretence that defendant has not possessed any personal estate of his deceased father, by reason that the deceased had in his lifetime assigned all personal estate to W. J. for the benefit of some friend or relation.

Charge the contrary.

That if any such deed were executed, the deceased was indebted to a large amount, and that he executed it with a view to defraud his creditors.

[ \*85 ]

That it was voluntary and without consideration.

That if any consideration was paid for such assignment, part of it was returned.

That such deed was a fraud upon the creditors, and ought to be set aside.

And that the defendant ought to account for all the personal estate.

And plaintiff further charges, that in case any consideration whatsoever was ever paid by the said W. J. or any other person or persons to the said J. J. for such deed or deeds instrument or instruments, or delivery of such effects, but which plaintiffs do not admit, the whole or some part thereof was returned to the said J. J. by the said W. J. or such other person or persons, or to some person in trust for him or them, or he or they was or were in some manner repaid the same, and such consideration was merely colorable; and plaintiff is advised and humbly insists that the execution of such deed or deeds instrument or instruments, and the delivery of such effects, was a gross fraud upon the fair and just creditors of the said J. J. and ought therefore to be set aside and such deed or deeds instrument or instruments delivered up to be cancelled. And that the said W. J. and such other person or persons to whom or in whose favor such deeds are pretended to have been made, ought to account for all such personal estate and effects as have been possessed or received by him or them by virtue or under color of such deed or deeds instrument or instruments, or which were delivered to him or them by the said J. J. in his life-time. But nevertheless, &c.

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XXVI. *Pretences and charges as to a release of all claims set up by the defendant.*

Pretence that deceased executed a release to the defendant of all claims.

Charge the contrary; or if she did, it was obtained by unfair means.

[ \*86 ]

That the deceased never gave any instructions for the same, nor was the draft of it perused by her.

And at times the said confederate B. pretends that the said C. in her life-time executed some deed or other instrument in writing, whereby she acquitted released and discharged him the said B. from the payment of all sums and sum of money due from him in respect of the matters aforesaid, and from all claims and demands whatsoever in respect thereof, or to some such or the like purport or effect. Whereas *plaintiff* charges the contrary thereof to be true, and moreover that the said C. never did make any such release or discharge to him the said B. as hereinbefore pretended; or if she did give or execute the same (but which *plaintiff* does not admit) she was grossly deceived and imposed upon in relation thereto, and that the same was obtained from her, or she was prevailed on to execute the same by some unfair means or practices used in that behalf \*by the said B. And as evidence thereof *plaintiff* charges that the said C. never gave any directions or instructions whatsoever to any person to prepare the same, nor was the same drawn or prepared by any person employed by or on the behalf of the said C., but that such pretended release or instrument if any such there were was drawn or prepared by or under the order or directions, or from the instructions of the said B. and by some person employed by him. And *plaintiff* moreover charges that no draft of the said pretended release or instrument was perused by the said C. or any person on her behalf at any time previously to the execution thereof, nor was the same sent to or laid before any person for such purpose. And *plaintiff* further charges that the said pretended release or instru-

ment was produced and brought to the said C. ready drawn and prepared for execution, and she never perused or read over the same, nor was the same read over to her, or however not truly in her hearing, nor were the contents thereof made known or fully explained to her at any time previously to or at the time of the execution thereof, but the said pretended release or instrument was stated or represented to her to be of some purport tenor or effect different from what the same really was, and that she would not have signed or executed the same in case she had known or been fully apprised of the real purport tenor and contents thereof. And *plaintiff* further charges that a considerable sum of money was due and owing from the said B. to the estate of the said C. *plaintiff's* father, and also to the said C. or one of them on the accounts aforesaid at the time of the execution of the said pretended release or instrument, notwithstanding which the said B. did not pay all or any part of such money, nor any sum of money whatsoever, as the consideration for her executing the said pretended release or instrument, nor did the said C. receive any other consideration whatsoever for the same; but nevertheless the said B. refuses to discover or disclose, as *plaintiff* humbly insists he ought to do, by whom and from whose orders and instructions and by whose directions the said pretended release was drawn or prepared, and where, in whose presence, and when the same was executed by the said C. and the names and places of abode of the subscribing witnesses thereto. And under the circumstances aforesaid, *plaintiff* charges and insists that the said pretended release or instrument (if any such was executed) ought to be delivered up to be cancelled as having been fraudulently and unfairly obtained from the said C.; but nevertheless the said confederate insists upon the contrary, and claims the full benefit of the said pretended release or instrument, and threatens and intends in case *plaintiff* shall proceed at law against him touching the matters aforesaid, to set up the said pretended release or instrument in bar thereto, or to any action to be brought in that behalf, &c.

That the release was produced ready for execution, and was not explained to her.

That the defendant was indebted to the deceased, and paid no part of the debts as a consideration for the release.

Defendant refuses to discover the particulars.

Charge that the release ought to be cancelled.

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\*3. BILLS RELATING TO ANNUITIES.\*

[ \*87 ]

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XXVII. *Bill by an annuitant for an account of money produced by sale of timber, which had been felled for the purpose of redeeming his annuity, and had been applied by the trustees in discharge of the arrears of another annuity.*

Humbly complaining sheweth unto your lordship your orator J. B. of, &c. That by indenture bearing date, &c. C. S. of, &c. did

Grant of annuity to plaintiff.

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\* Annuities, given by a will, though payable out of the personal estate or general funds of the testator, are generally governed by the principles applicable to a devise of real estate. *Broadhurst v. Broadhurst*, 1 Paige, Ch. R. 331, per Walworth, Ch.

Power to re-purchase.

Grantor desirous to re-purchase gave a power of attorney to three of the defendants to fell timber.

Declaration of trust that the money to be raised should be applied in re-purchase of the annuity.

Large quantities of timber felled, and the moneys received by W. C. and refusal by

grant unto your orator an annuity of £—— payable half yearly during the life of the said C. S. and for the better securing the re-payment thereof the said C. S. did thereby assign unto or in trust for your orator the dividends and interest of the sum of £—— 3 per cent. consolidated bank annuities then standing in the names of, &c. as trustees named in the marriage settlement of the said C. S. And it was thereby provided and agreed that the said C. S. should be at liberty to re-purchase the said annuity upon giving three months notice thereof to your orator his executors administrators and assigns. As in and by, &c. And your orator further sheweth that the said C. S. being entitled as tenant for life in possession of certain real estates hereinafter mentioned, and the said C. S. having proposed to purchase the said annuity upon the terms provided by the said indenture of the —— day of —— and to raise the sum necessary for that purpose by a fall and sale of timber then standing upon the said estates, to which your orator consented and agreed, the said C. S. duly executed a certain instrument in writing or power of attorney bearing date, &c. whereby after reciting, &c. [*he appointed I. H. of, &c. W. B. of, &c. and W. C. of, &c. three of the defendants as the attorneys, to fell the timber and to sell and to apply the produce in the redemption of the annuity.*] And your orator further sheweth that by an instrument in writing bearing date, &c. [*being a declaration of trust that the money received by the trustees by the fall of timber was to be applied in the re-purchase of plaintiff's annuity.*] As in and by, &c. And your orator further sheweth that after the execution of the said last-mentioned instrument the said I. H. W. B. and W. C. by virtue of the said power of attorney caused divers large quantities of timber which were growing on the said manors and estates or some of them to be felled or cut down and sold and disposed of, and the said W. C. received the moneys arising by such sales which amounted in the whole to the sum of £—— and upwards. And your orator further sheweth, that the said W. C. notwithstanding

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Where a father gave by his will certain personal property, in trust, to pay out of the profits, an annuity for the support of his son, it was held, that the annuity was inalienable, and could not be reached in anticipation, by creditors. *Clute v. Bool*, 8 Paige, Ch. R. 83. The next of kin of an intestate cannot file a bill for the arrears of an annuity due the intestate, but such bill should be filed by the administrator; and unless the persons filing such bill, as next of kin, are entitled to administration, the bill will be dismissed. *Clason v. Lawrence*, 3 Edw. Ch. 48. The court will not interfere with the exercise of a discretionary power given to executors, to increase an annuity. *Mason v. Jones*, 3 Edw. Ch. 497. A bill in equity will lie, to enforce payment of an annuity charged on land. *Townshend v. Duncan*, 2 Bland, 45. In a suit in equity for the arrears of an annuity, the decree should not only be for the sums already due, and interest from the times at which they were payable, but should reserve liberty to apply to the court from time to time, to extend its decree so as to embrace sums afterwards becoming payable. *Marshall v. Thompson*, 2 Munf. 412. An annuity was given by will to a wife of the testator, payable on the 1st of March, and the testator died in August: held, that the annuitant was entitled to the full annuity on the 1st of the following March. *McLemore v. Goode*, 1 Harp. Ch. 272; see also, *Craig v. Craig*, 1 Bailey, Ch. 102. An interest in an annuity may be reached by a creditor's bill, under the Revised Statutes of New York. *Sillick v. Mason*, 2 Barb. Ch. R. 79. If the land on which an annuity is charged, is sold during the pendency of a suit in equity to enforce the same, the court, without noticing the purchaser *pendente lite*, may order the land to be sold to satisfy the arrears of the annuity. *Philips v. Williams*, 5 Gratt. 259.

ing the directions contained in the said instrument or power of attorney refused to apply the money received by him from the sale of the said timber in the re-purchase of your orator's said annuity, but hath with the consent of the said I. H. and W. B. applied the same to his own use or for some purposes not authorized by the said \*power of attorney and without your orator's concurrence and consent, and expressly contrary to a notice given to him by your orator's solicitor in that behalf and which application so made by him the said W. C. was in direct breach of the trust reposed in the said I. H. W. B. and W. C. by the said instrument or power of attorney and which they undertook to execute. And your orator further sheweth unto your lordship that your orator was and is under and by virtue of the aforesaid power of attorney and the appropriation thereby made of the said timber and the money to arise by sale thereof entitled to have a sufficient part of the said money (after deducting the charges and expenses attending the said sale and the execution of the said trust) applied in the re-purchase of your orator's said annuity upon the terms provided by the said indenture of the — day of —, and your orator being so entitled as aforesaid, he has by himself and his agents many times applied to the said I. H. W. B. and W. C. and requested them to account with your orator for all the moneys which have been received by them or either of them or by any other person or persons by their or any of their order or for their or any of their use for or in respect of the sale of the said timber and to pay the same or a sufficient part thereof in or towards the re-purchase of the said annuity of £—. And your orator well hoped that the said I. H. W. B. and W. C. would have complied with such your orator's reasonable requests as in justice and equity they ought to have done. BUT NOW SO IT IS may it please your lordship that the said I. H. W. B. and W. C. combining and confederating with I. W. and F. E. of, &c. and C. S. now residing abroad out of the jurisdiction of this honorable court and with divers other persons, &c. [see form 4, p. 5,] they the said defendants refuse to comply with your orator's said requests, sometimes pretending that the said C. S. never executed such instrument or power of attorney as aforesaid or any other instrument or power of attorney whatever for the purposes aforesaid. Whereas your orator charges the contrary thereof to be true, and so the defendants will at other times admit. But then they pretend that the said I. H. W. B. and W. C. never did cause any timber or other trees whatever which were growing on the aforesaid manors and estates or any of them to be felled or cut down and sold and disposed of under and by virtue of the said power of attorney, nor ever receive any sums or sum of money arising by such sale or any part thereof. Whereas your orator charges the contrary of such pretences to be true, and so the said defendants will at other times also admit. But then they pretend that the said W. C. hath accounted for and paid the money arising from the sale of the said timber to the defendants I. W. and F. E. and to their late partner F. B. now deceased, who as such co-partners were entitled to receive the same in preference to your orator and had some

him to apply the same as directed.

[ \*88 ]

Plaintiff entitled to have a sufficient part applied in re-purchase of his annuity.

Applications.

Pretence that no power of attorney was executed.

Charge the contrary.

Pretence that no timber was felled under the power.

Charge the contrary.

Pretence that the produce was paid under an order of court to two other defendants.

Charge that they had no lien.

[ \*89 ]

That the court was surprised into such order.

That W. C. took an indemnity from the parties. Pretence of a former annuity.

Charge that the same had been fully paid.

That the trustees ought to have applied the moneys in repurchase of plaintiff's annuity, and that W. C. committed a breach of trust.

Charge that the defendants had assented to the power of attorney.

Claim of right by C. S. resident abroad.

Prayer.

preferable claim or lien thereon and had obtained some order of this honorable court for the payment thereof upon the said W. C. Whereas your orator charges that the said I. W. F. E. and F. B. had no lien or claim whatever thereon, nor any right or title to receive or call upon him the said defendant W. C. for the payment \*of the same or any part thereof or to compel him to account for or pay the same or any part thereof. And that if in truth any order of this honorable court was made respecting the payment of the said sum of money to the said I. W. F. E. and F. B. or in any manner relating thereto, yet this honorable court was surprised in such order and was not in any manner apprised of the truth of the said transaction, and that the said W. C. confederating with the said I. W. F. E. and F. B. purposely suppressed or concealed from this honorable court the authority under which the said timber had been cut and the purpose for which it was meant to be applied. And your orator further charges that upon payment being made to the said I. W. F. E. and F. B. by the said defendant W. C. (in case any such was made) he the said defendant required and took from them some indemnity or security against the right or claim of your orator to such money. And your orator further charges that if the said sum was paid by the said W. C. to the said I. W. F. E. and F. B. the same was so paid to them under the pretence that considerable arrears were due to them as co-partners in respect of an annuity granted to them by the said C. S. Whereas your orator charges that the said I. W. F. E. and F. B. had at the time of such payment by their receipts from the estates and property of the said C. S. been fully paid all arrears of their said annuity. And your orator charges and humbly insists that the said defendants I. H. W. B. and W. C. having accepted the trusts under the said power of attorney ought to have paid the said moneys arising by such sale as aforesaid (after such deduction as aforesaid) or a competent part thereof to your orator in or towards the re-purchase of the said annuity of £——. And that the said defendant W. C. having paid the said moneys arising by such sales as aforesaid contrary to the directions contained in the said power of attorney, was guilty of a breach of trust in so doing, and made himself personally liable to answer and pay the same to your orator. And your orator further charges that the said I. W. F. E. and F. B. were at or about the time of the making of the said power of attorney fully apprised of the same and of the purpose thereof, and did by a letter written by their solicitor fully assent thereto, but nevertheless the said defendants refuse to comply with your orator's aforesaid requests. And at times the said defendant C. S. claims some right or interest to or in such moneys or some part thereof, and he is now residing abroad out of the jurisdiction of this honorable court. All which acting, &c. [see form VI. p. 5, *interrogating to the stating and charging parts.*] And that an account may be taken of all and every the moneys which have been received by the said I. H. W. B. and W. C. or by any person by their order or for their use for or in respect of such sales as aforesaid. And that the said defendants may be decreed to pay what shall appear to be due from them respectively



upon the taking of the aforesaid account, and that the same after such deduction as aforesaid or a competent part thereof \*may be paid to your orator in or towards the repurchase of the said annuity of £——. [*And for further relief, see form VIII. p. 5.*] May it please, &c. [*See form No. 1, p. 6.*]

[ \*90 ]

J. S.

\*XXVIII. *Bill by the grantor of an annuity and his surety against the devisee and executors of the grantee (one of the executors not having proved or renounced) to set aside the annuity on account of inadequacy of price, (1) the annuity being secured by bond and a warrant of attorney.—Prayer that upon repayment of the money advanced, with lawful interest, the bond may be delivered up to be cancelled, and for an injunction to restrain the defendants from taking out execution against the plaintiffs.*

In Chancery.

To the Right Honorable Edward Lord Thurlow  
Baron of Ashfield in the County of Suffolk Lord  
High Chancellor of Great Britain.

Humbly complaining sheweth unto your lordship your orators G. H. of, &c. esq. and J. S. of, &c. tailor. That in the month of — 1779, your orator G. H. being indebted to your orator J. S. in the sum of 100*l.* and upwards, for clothes and necessaries found and provided by your orator J. S. to and for your orator G. H. and being likewise indebted to several other persons in divers sums of money, amounting to 200*l.* and upwards, and your orator G. H. being much distressed for money, and pressed by his creditors to pay and satisfy their several and respective demands, your orator G. H. applied to J. P. late of, &c. to advance and lend to your orator G. H. the sum of 300*l.* to satisfy his said creditors, who agreed to advance and lend the same upon the security of both your orators. And your orators further shew unto your lordship that on or about the — day of the said month of — 1779, the said J. P. ad-

Plaintiff G. H.  
distressed for  
money applied  
to J. P. to  
lend him 300*l.*

Loan of 100*l.*  
on the joint

(1) The annuity in this case was decreed by the Master of the Rolls to be set aside, and the decree affirmed by the Lord Chancellor on appeal. See *Heathcote v. Paignon*, 2 Bro. Ch. Ca. 166; and see also *Macghee v. Morgan*, 2 Sch. & Lef. 395 (n) and note (a) to *Aguilar v. Aguilar*, 5 Madd. 416.

An annuity cannot be set aside for mere inadequacy of price, for that can only be applied as evidence of fraud. The notion of a market price ascertained in the usual way upon the principle of calculation at an insurance office, is not a just criterion of the value of an annuity. In the case of *Lowe v. Burchard*, 8 Ves. 133; where the bill was filed to set aside an annuity, and the circumstances did not amount to *fraud*, the Lord Chancellor dismissed the bill with costs.

Unless a defect in the memorial of an annuity is stated in the pleadings or evidence, no advantage can be taken of it. The court proceeds upon the pleadings and proofs in a cause, and if the question as to the validity of the annuity is not raised on the pleadings, the court is not authorized to question the title of the annuitant; per Sir John Leach, V. C., in the case of *Dunn v. Calcraft*, 2 Sim. & Stu. 56, 62, upon a petition of rehearing.

bond of plain-  
tiffs.

[ \*91 ]

Refusal to ad-  
vance the  
other 200*l.*,  
unless an an-  
nuity was se-  
cured by  
plaintiffs'  
joint bond.  
Plaintiffs  
through dis-  
tress forced to  
comply.

Joint bond  
given for se-  
curing an an-  
nuity of 50*l.*  
during the life  
of plaintiff G.  
H.

Warrant of at-  
torney, given  
on which  
judgment was  
entered up.

Only 200*l.*  
consideration  
paid.

Annuity of  
50*l.* paid to J.  
P. during his  
life.

Agreement  
that the an-  
nuity should  
be redeem-  
able.

Will of J. P.  
bequeathing  
the annuity to  
his widow.

vanced to your orator the said G. H. the sum of 100*l.* on the joint  
bond of your orators for securing the repayment thereof with in-  
\*terest at and after the rate of 5 per cent. per annum, and at the  
time and in the manner expressed in the condition of the said bond.  
But the said J. P. absolutely refused to advance the remainder of  
the said sum of £300 unless your orators would secure by their joint  
bond to him the said J. P. one clear annuity or yearly sum of £50  
for and during the term of the natural life of your orator G. H.,  
redeemable as after-mentioned. And your orators further show unto  
your lordship that your orators objected to granting the said annuity  
for so small a consideration, but your orator G. H. being much  
distressed for money to pay his said debts as aforesaid, and your  
orator J. S. being likewise much in want of money, and the said  
J. P. taking unjust advantage thereof would not advance the said  
sum of £200 to your orator upon any other terms. And your orators  
being obliged to comply therewith, your orators by their joint and  
several bond or obligation, bearing date on or about the — day  
of — in the same year, 1779, for and in consideration of £200  
paid to your orator G. H. by the said J. P. became bound unto the  
said J. P. his executors administrators and assigns, in the penal  
sum of £400, with a condition thereunder written for making void  
the same on payment by your orators or either of them, their or one  
of their heirs executors or administrators, unto the said J. P. his  
executors administrators and assigns of the full and just sum of £50  
for and during the term of the natural life of your said orator G. H.  
by four even and equal payments in the year. As in and by the  
said bond now in the custody or power of the confederates hereinafter  
named or one of them, when produced to this honorable court, will  
more fully appear. And your orators further show unto your  
lordship that your orators executed to the said J. P. a warrant of  
attorney to confess judgment on the said bond, and that judgment  
was accordingly entered up in his Majesty's Court of K. B. at  
Westminster as of Trinity Term in the said year 1779, against your  
orators for £400 debt and 63 shillings costs, as by the record  
thereof appears. And your orators further show unto your lordship  
that your orators never received more than £200 as the consideration  
for granting the said annuity, and your orators paid the said annuity  
of £50 regularly and quarterly as the same became due to the said  
J. P. up to the day of his death, which happened sometime in the  
month of —, in the year 1781. And your orators further show  
that although the said J. P. did not suffer the same to be inserted in  
the condition of the said bond, yet it was agreed and understood  
between your orators and him that when they should be able to  
redeem the said annuity and pay the said sum of £200 to him they  
should be at liberty so to do, and that upon their so doing he would  
deliver up the said bond. And your orators further show unto  
your lordship that the said J. P. duly made and executed his last  
will and testament in writing bearing date the — day of —  
1780, and after bequeathing the said annuity or yearly sum of £50  
unto his wife, M. P. (one of the confederates hereinafter named) for  
her life, appointed T. I. R. R. and J. R. of, &c. distillers, three

other of the confederates hereinafter named, executors of his said will. And the said T. I. and J. R. soon after the \*decease of the said testator J. P. duly proved the said will in the Prerogative Court of the Archbishop of Canterbury, and took upon themselves the burthen of the execution thereof, power being reserved to the said R. R. the other executor named in the said testator's said will, to prove the same. As by the probate of the will when produced to this honorable court will more fully appear. And your orators further show unto your lordship that your orator G. H. hath since the decease of the said testator J. P. not only paid to the said confederate M. P. all arrears of the said annuity or yearly rent-charge of £50 up to the — day of — last past, but has actually paid off and discharged to the said confederates T. I. R. R. and J. R. all principal and interest moneys due and owing on the said bond of the — day of — 1779, for securing to the said J. P. his executors administrators and assigns the said sum of 100*l*. and interest as aforesaid; and the said confederates T. I. R. R. and J. R. have given to your orators a receipt and discharge for the same upon the back of the said bond now in your orators' custody, and ready to be produced as this honorable court shall direct. And your orators further show unto your lordship that from the unjust advantage taken of your orator G. H.'s distress and want of money by the said J. P. only four years' purchase was given for the said annuity or clear yearly sum of £50 so secured as aforesaid. And your orators being desirous of redeeming the same, have by themselves and their agents frequently applied to the said confederates M. P. T. I. R. R. and J. R. to permit and suffer your orator to redeem the said annuity or yearly sum of £50, on payment of the principal and interest after the rate of 5 per cent. per annum; but the said confederates severally refused so to do. And notwithstanding your orators have tendered the sum of £102 and 2*s*. unto the said M. P. T. I. R. R. and J. R. being the balance of the principal sum of £200 and legal interest due on the said annuity bond, they severally and respectively refuse to take the same or to suffer your orators to redeem the said annuity on any terms, but insist on your orators' paying the said annuity of £50 for and during the life of your said orator G. H. And they the said confederates threaten to sue out one or more writ or writs of execution against your orators on the said judgment so entered up against your orators as aforesaid, to compel payment of the said annuity or yearly sum of £50; and although your orators have been ready to pay to the said confederates the principal sum and interest due on the said annuity bond, yet the said confederates refuse to accept the same as in justice and equity they ought. BUT NOW SO IT IS may it please your lordship that the said M. P. combining and confederating with the said T. I. R. R. and J. R. and with divers other persons, &c. [*see form IV. p. 5.*] they absolutely refuse to accept the said principal money and interest, or to suffer your orators to redeem the said annuity upon any terms, although your orators charge that it was agreed and fully understood between them and the said J. P. that they should be at liberty to redeem the same when they were able so to do. And your orators

[ \*92 ]

Will proved by two of the executors, power reserved to the other executor to prove.

All arrears of the annuity, and of the moneys due on the first bond, paid to the executors.

Only four years purchase given for the annuity.

Applications by plaintiffs to be permitted to redeem on payment of the principal and interest at 5 per cent.

Refusals to comply.

Charge that it was agreed that plaintiffs should be at liberty to redeem.

[ \*93 ]  
That when the annuity was granted plaintiff G. H. was in great distress, of which J. P. took advantage, and that 200*l.* was a bad consideration.  
That upon repaying the principal money and interest, the bond ought to be delivered up.  
Prayer.

charge that when the said annuity bond was given, your orator G. H. was in great distress for money, which \*the said J. P. well knew, and that he took an unjust advantage thereof. And that your orator G. H. being only of the age of thirty years, and a very good life, the sum of 200*l.* was a bad consideration for the said annuity of 50*l.* a-year, being only four years' value and which was all your orator G. H. received in granting the same. And therefore your orators humbly insist that upon repaying what is due for the said principal money and interest, the said bond ought to be delivered up to be cancelled, and satisfaction entered up upon the record of the said judgment. But the defendants refuse so to do, and insist upon being paid the said 50*l.* a-year, during your orator G. H.'s life. All which actings, &c. [*see form VI. p. 5, interrogating to the stating and charging parts.*—And that upon payment of what remains due on account of the said 200*l.* so advanced as aforesaid, with lawful interest, your orator may be let in to redeem the said annuity. And that upon repayment thereof to the said defendants they may be decreed to deliver up the said bond to be cancelled, and acknowledge satisfaction upon the record of the said judgment, and may be in the mean time restrained by the injunction of this honorable court from taking out execution against your orators, or taking any remedy at law against them or either of them in respect of the matters aforesaid. [*And for further relief, see form VIII. p. 5.*] May it please, &c. [*See forms Nos. 1, and 4, p. 6.*]

J. L. L.

*Pray injunction and subpœna against  
M. P. T. I. R. R. and J. R.*

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XXIX. *Charges in a bill brought to establish an annuity charged on an estate, which the defendant alleges to have purchased for a full consideration without notice.*

Pretence that defendant purchased the estate for a full consideration without notice.  
Charge that the money paid was not a full consideration for the estate free from the annuity, and that he or his solicitor or agent had notice.

And at times the said defendant pretends that he purchased the said estate and premises for a full and valuable consideration without notice of the said annuity or yearly rent-charge charged thereon, and therefore he insists that although the said yearly rent-charge may not have been redeemed, yet he ought not to be affected thereby. Whereas your orator charges that the money paid by the said defendant for the purchase of the said estate and premises was not a full consideration for the absolute purchase of the fee-simple and inheritance thereof free from the said yearly rent-charge, and that he or some attorney or agent concerned for him in or about such purchase, or preparing the conveyance executed on the occasion, before or at the time of the execution thereof, or payment of such purchase-money or some part thereof, had some knowledge notice information belief or suspicion or reason for belief or suspicion, and did in his conscience believe or suspect that the said estate and premises or \*some part thereof were or had been subject or chargeable

[ \*94 ]

with the payment of the said annuity or yearly rent-charge, and particularly the said defendant or such attorney or agent before or at such time read or had in his custody or saw a copy abstract or extract of the grant of the said yearly rent-charge, and also some receipt or receipts for the same, and some letter or letters or copies drafts or extracts of some letter or letters relating thereto. And the said yearly rent-charge was mentioned in some particular of the said estate and premises which was delivered to him the said defendant or some attorney or agent for him previously to his purchase thereof, and regard was had thereto in settling the price to be paid by the said defendant for the said estate and premises, by deducting a considerable sum as the value of the said yearly rent-charge and out of the value of the said estate and premises to be sold free from such charge, and a further deduction was also made thereout in respect of the great arrears of the said yearly rent-charge at that time, and the said yearly rent-charge was excepted or otherwise mentioned in the conveyance of the said premises to the said defendant or otherwise by some covenant or clause in such conveyance, or by some separate deed or writing, he the said defendant was indemnified against any demand in respect of the said yearly rent-charge or the arrears thereof, or to some such or the like effect. And therefore plaintiff is advised and humbly insists that the said estate and premises are now liable to the payment of the said annuity or yearly rent-charge and the arrears thereof.

That he or they read or saw an abstract of the annuity deed, or some letter, &c.

That the annuity was mentioned in some particular of the estate.

That the value was deducted out of the purchase-money, and a deduction made on account of the arrears,

or the defendant was in some way indemnified.

#### 4. BILLS BY ASSIGNEES ON BEHALF OF BANKRUPTS' ESTATES.<sup>b</sup>

*XXX. Bill by the assignees of a bankrupt against bankers, for an account of the money produced by sale of certain estates which had been conveyed to them in trust for securing certain advances to be made by them for the bankrupt.—(The interrogatories are inserted.)*

To, &c.

Humbly complaining show unto your lordship your orators J. M. of, &c. W. P. of, &c. and J. H. of, &c. assignees of the estate and

<sup>b</sup> A claim against the assignees of a bankrupt, under the laws of the United States' on the ground of a trust in the assignees, and not on the ground of a debt due from the bankrupt, is within the jurisdiction of the chancery court. *Denston v. Morris*, 2 Edw. Ch. 37. A solvent partner cannot call upon the assignees of a bankrupt co-partner, or partnership debtors, who have *bonâ fide* settled with the assignees, to account for the partnership property, in order to get possession of the property, for the purpose of distribution among the partnership creditors. The right of the assignees to distribute the fund is equal to his, at law, and superior to it in equity. *Murray v. Murray*, 5 Johns. Ch. R. 60. The assignees, and not individual creditors, are the proper parties to sue for property fraudulently conveyed by a bankrupt. *Edwards v. Coleman*, 2 Bibb, 204. But where the assignee of a bankrupt refuses to

[ \*95 ]

Conveyance  
to the bankers  
by lease and  
release.

The bankers  
accept certain  
bills drawn by  
the bankrupt,  
which they  
were obliged  
to pay.

effects of C. H. H. late of, &c. banker, bankrupt.(1) That the said \*C. H. H. was in and before the month of — seised in fee-simple or otherwise well entitled to him and his heirs, subject only to an estate for life to his wife E. A. H. in case she should survive him of and in the manor, &c. And your orators further show that by certain indentures of lease and release bearing date respectively —, the release being made or expressed to be made between the said C. H. H. of the first part, S. O. H. of, &c. of the second part, and T. H. L. M. S. B. C. G. and H. H. all of, &c. bankers, and five of the defendants hereto, of the third part, the said C. H. H. by way of securing to the said T. H. and his said copartners all such sums of money as should be advanced by them to or for the use of him the said C. H. H. granted released and confirmed unto the said T. H. &c. their heirs and assigns all those the aforesaid manor, &c. [*empowering the defendants to sell.*] As in and by, &c. And your orators further show unto your lordship that the said T. H. and his said copartners allege, that upon the credit of the said security they the said T. H. and his said copartners accepted bills drawn upon them by the said C. H. H. to the amount of £—— over and above the money of the said C. H. H. in the hands of the said T. H. and his said copartners, and when the same became due the said C. H. H. did not provide them with money for the payment of the said bills or any of them, and the said T. H. and his said copartners were

(1) The 6 Geo. 4, c. 16, s. 88, (following the 5 Geo. 2, c. 30, s. 38) enacts, that no suit in equity shall be commenced by the assignees, without the consent of the major part in value of the creditors who shall have proved under the commission, present at a meeting pursuant to notice given in the *London Gazette* for that purpose; provided that if one-third in value or upwards of such creditors shall not attend such meeting, the assignees shall have power, with the consent of the commissioners, testified in writing under their hands, to commence such suit.

It should appear on the face of the bill that the assignees have authority to commence the suit; see form XXXIV.

In *Ex parte Whitchurch*, 1 Atk. 90, it was decided, that the creditors cannot give a valid general authority to assignees to institute suits, but that there must be a meeting to sanction each suit; and in the case of *Ockleston v. Benson*, 2 Sim. & Stu. 265, a plea that the bill, which was filed by the assignees of the bankrupt, was filed by them without the consent of the major part in value of the creditors pursuant to the 5 Geo. 2, was allowed; and see *Wilkins v. Fry*, 1 Mer. 250, Eden's B. L. p. 342.

To a suit instituted by assignees in the object of which the creditors have no interest, as to enforce a persons' claim of indemnity, the consent of the creditors is not necessary; nor in such a case would the dissent of some of the assignees prevent the others from instituting a suit to assert their right; *Wilkins v. Fry*, 1 Mer. 244, 262; S. C. 2 Rose, 371.

bring suit to set aside a fraudulent conveyance by the bankrupt, any creditor may bring such a bill. *Sands v. Codwise*, 4 Johns. R. 536. Where the complainant in a creditor's bill, knowing that a defendant has been discharged in bankruptcy, does not, in his bill, impeach the certificate, for fraud or other cause, and the answer sets up the certificate in bar, the complainant cannot, in opposition to a motion to dissolve an injunction which has been granted on the bill, read affidavits impeaching the discharge. *Hubbell v. Cramp*, 11 Paige, 310. As to the manner in which a complainant should proceed where a defendant in equity has been discharged subsequent to a decree against him, see *Alcott v. Avery*, 1 Barb. Ch. R. 347. A judgment creditor cannot pursue a bankrupt by bill, after he has proved his debt in bankruptcy. *Hoxton v. Corse*, 4 Edw. Ch. 585. Where the complainant in a bill has been discharged, the assignee may come in and file a supplemental bill; and if he does not do so, the complainant may make him a defendant. *Springer v. Vanderpool*, 4 Edw. Ch. 362.

obliged to take up and pay the same with their own proper moneys. And your orators further show that the said T. H. and the said defendants his copartners with the privity and approbation of the said C. H. H. and E. A. his wife, caused the said manor and premises to be put up to sale by public auction on the — day of — by Mr. C. and the same were then sold to one E. R. Esq. who was the highest bidder at the said sale for the sum of £—. And your orators further show unto your lordship that after the said sale and on or about — a commission of bankrupt under the great seal of Great Britain was awarded and issued against the said C. H. H. and he was thereupon duly found and declared a bankrupt by the major part of the commissioners in and by the said commission named and authorized, and your orators were duly chosen assignees of his estate and effects, and the usual assignment of his personal estate and a bargain and sale of his real estate were duly made to your orators by the major part of the commissioners in the said commission named. And your orators further show unto your lordship that by indentures of lease and release bearing date respectively &c. the release being of six parts and made between, &c. the said manor and other premises were in consideration of the said sum of £— duly conveyed unto the said E. R. in manner therein mentioned. And your orators further show unto your lordship that the said price or sum of £— was paid by the said E. R. to the said T. H. and his said copartners and that the said T. H. and his said copartners afterwards paid the sum of £— part thereof as and for the consideration or value of the life estate to which the said E. A. H. was entitled in remainder in the said manor and premises as aforesaid, but the said T. H. and the said defendants his said copartners have ever since retained and do now retain in their hands the residue of the said sum of £— which after satisfying their own debt amounts to between £— and £—, and they have from time to time mixed such residue with their own moneys and employed the same in their trade or business of bankers or have otherwise made interest thereof. And your orators further show that they by themselves and their agents have repeatedly applied to the said T. H. and his said copartners and requested them to pay to them as assignees as aforesaid the residue of the aforesaid purchase-money after satisfying their own debt together with interest thereon from the time they received the same. And your orators well hoped that the said defendants would have complied with such your orators' reasonable requests as in justice and equity they ought to have done. BUT NOW SO IT IS, &c. [see form IV. p. 5.] And the said T. H. L. M., &c. pretend that the moneys produced by the sale of the said manor and premises were to an inconsiderable amount, and not sufficient after deducting the aforesaid sum of £— to pay and satisfy the debt due to them. Whereas your orators charge the contrary of such pretences to be the truth, and so it would appear if the said defendants T. H. L. M. &c. &c. would set forth as they ought to do a full and true account of all and every the dealings and transactions between the said defendants and the said C. H. H. and of what is due to the said defendants in respect thereof, and also a full and true account of the moneys

Sale by auction of the estates conveyed.

Commission of bankrupt against C. H. H.

Conveyance to the purchaser.

[ \*96 ]

Consideration paid for the purchase of the contingent life estate of the bankrupt's wife.

The bankers retained the surplus of the purchase-money, after satisfaction of their own debt, and employed the same in trade. Application to them.

Pretence that the purchase-money was inconsiderable, and insufficient to pay the debt.

Charge the contrary.

Charge as to  
the other de-  
fendants,  
claiming an  
interest in the  
purchase-  
money.  
The interro-  
gating part.

[ \*97 ]

received by them from the sale of the said manor and premises and of their application thereof. And your orators further charge that the said other defendants severally claim some interest in the said residue of the said purchase-money now in the hands of the said T. H. and his said copartners, but how they make out the same they respectively refuse to discover. All which actings, doings, &c. [*see form VI. p. 6.*] Whether the said C. H. H. was not in and before the month of — seised in fee-simple or otherwise well entitled to him and his heirs subject as aforesaid of and in the manor lands and premises hereinbefore mentioned or some and what part thereof, or of and in some other and what lands and premises; And whether such indentures of lease and release as are hereinbefore stated to bear date respectively the — were not made and executed between such parties and to such purport and effect as hereinbefore set forth, or some other indentures of lease and release of some other and what date between some other parties and whom, to such or the like or some other and what purport and effect; And whether upon the credit of the aforesaid security the said T. H. and his copartners \*or any and which of them did accept any and what bills drawn upon them or some or one and which of them by the said C. H. H.; And whether to the amount of £—— or to what amount over and above the money of the said C. H. H. in the hands of the said T. H. and his said copartners; And whether when the same became due the said C. H. H. did or not provide them with money for the payment of the said bills or any and which of them; And whether the said T. H. and his said copartners did take up and pay the same or any and which of them with their own proper moneys or how otherwise; And whether the said T. H. and the said defendants his copartners with the privity and approbation of the said C. H. H. and E. A. his wife did not cause the said manor and premises to be put up to sale by public auction at or about the time hereinbefore mentioned or at some other time and when; And whether not by Mr. C. or by whom; And whether the same were not then sold to the said E. R. for the sum of £—— or at what other price; And whether the said E. R. was not the highest bidder at the said sale for the sum of £—— or how otherwise; And whether after the said sale and on or about — a commission of bankrupt under the great seal of Great Britain was not awarded and issued against the said C. H. H.; And whether he was not thereupon duly found and declared a bankrupt by the major part of the commissioners in and by the said commission named and authorized or how otherwise; And whether your orators were not duly chosen assignees of his estate and effects; And whether the usual assignment of his personal estate and a bargain and sale of his real estate were not duly made to your orators by the major part of the commissioners in the said commission named or how otherwise; And whether the said manor and other premises were not duly conveyed to the said E. R. by such indentures of lease and release as aforesaid or by some other and what indentures; And whether the said price or sum of £—— or some other and what sum was not paid by the said E. R. to the said T. H. and his said copartners or one and which of them; And



whether the said T. H. and his said copartners did not afterwards pay the sum of £—— or some other and what sum part thereof as or for the consideration or value of the life-estate to which the said E. A. H. was entitled in remainder in the said manor and premises as aforesaid, or how otherwise; And whether the said T. H. and the said defendants his copartners have not ever since retained and do not now retain in their hands the residue of the said sum of £——, and if so why and for what reason; And whether after satisfying their own debt the same doth not amount to between £—— and £—— and to what sum in particular; And whether they have not from time to time or at some time or times and when mixed such residue or some and what part thereof with their or some or one and which of their own moneys; And whether they have not and when and for how long employed the same or some and what part thereof in their trade or business of bankers, or otherwise and how made interest thereof or some and what part, or how otherwise; And whether your orators have not made such applications and requests to the said defendants as hereinbefore mentioned or some other and what applications and requests \*to such or the like or some other and what effect; And whether they have not respectively refused to comply therewith, and if so why and for what reason; And that the said defendants may set forth a true and full account of all and every the dealings and transactions between the said defendants or either of them and the said C. H. H., and of what is due to the said defendants in respect thereof; And also a full and true account of all and every the sum and sums of money which hath or have been received by them or either of them, or by any other person or persons by the order or for the use of them or either and which of them, for or in respect of the produce or money arising by sale of the said manor and premises or any part thereof, and when and from whom all and every such sums were respectively received, and how the same were applied. And that the said defendants may answer the premises; and that an account may be taken of the moneys received by the said defendants T. H. and his said copartners from the sale of the said manor and lands of G. and of their application thereof, and also an account of the dealings and transactions of the said defendants with the said C. H. H. and of the debt due to them in respect thereof, and secured by the aforesaid manor and premises; and that the balance which shall appear to be due from them upon the accounts aforesaid together with interest upon such balance from the time the said purchase-moneys were received by them as aforesaid may be paid to your orators. [*And for further relief, see form VIII. p. 5.*] May it please, &c. [*see form No. 1, p. 6.*]

[ \*98 ]

Interrogatory  
for the ac-  
count of deal-  
ings, &c.

Prayer.

J. L.

XXXI. *Bill by the assignee of a bankrupt's estate to set aside an assignment of the lease of certain premises, made to the defendant by the bankrupt a short time previously to his bankruptcy.*

Humbly complaining sheweth unto your lordship your orator S. S. of, &c. assignee of the estate and effects of T. D. late of, &c. bankrupt. (2) That by an indenture of lease bearing date on or about — I. N. of, &c. demised unto the said T. D. certain messuages or tenements, &c. then in the occupation of the said T. D. with the appurtenances to hold from the — day of — for the term of — years under and subject to the payment of the yearly rent of £— and to the performance of the several covenants conditions and agreements therein contained. As in and by the said indenture of lease which is now in the custody or power of W. C. of, &c. (the defendant hereinafter named) reference being thereunto had will more fully appear. And your orator further sheweth unto your lordship that in or about, &c. the said T. D. being insolvent and unable to pay his creditors, and well knowing that a commission of bankrupt would \*speedily be issued against him, the said T. D. concerted and agreed with said defendant W. C. to assign to him the said indenture of lease for a nominal consideration of £— to be expressed in the deed of assignment; and the said T. D. caused a deed of assignment to be prepared accordingly by his own solicitor and the same was dated on, &c. and was executed by the said T. D. on the day of the date thereof; and the said T. D. then on or about that time, delivered the said indenture of lease and assignment to the said defendant. And your orator further sheweth that the said W. C. did not in fact pay to the said T. D. the said sum of £—; and that the said assignment was so made in order to prevent the just creditors of the said T. D. from having the benefit of the said lease in case of his bankruptcy, and that the said defendant might hold the same in trust for the said T. D. or some part of his family or for the joint benefit of the said T. D. and the said defendant. And your orator further sheweth unto your lordship that on or about, &c. a commission of bankrupt under the great seal of Great Britain was awarded and issued against the said T. D., &c. [stating the proceedings under the commission, vide ante, p. 95.] As in and by the said commission and the proceedings had thereunto when produced will appear. And your orator further sheweth unto your lordship that he hath himself and his agents repeatedly applied to the said defendant W. C., and hath requested him to deliver up the said indenture of assignment to be cancelled, and also to deliver up to your orator the said indenture of lease in order that your orator may dispose of the same for the benefit of the just creditors of the said T. D.; with which just and reasonable requests your orator well hoped that the said W. C. would have complied as in justice and equity he ought to have done. BUT NOW SO IT IS, &c. [see form IV. p. 5.] And the said defendant

Lease granted to the bankrupt.

The assignment to the defendant concerted between him and the bankrupt.

[ \*99 ]

Consideration not paid.

Assignment made to defraud the creditors.

Commission of bankrupt.

Applications to the defendant.

(2) See note (1) ante, p. 94.

pretends that he duly paid to the said T. D. the said consideration of £—— at the time of his executing the said indenture of assignment. Whereas your orator charges the contrary thereof to be the truth. And your orator further charges that the said defendant is a person in poor circumstances, and had not at that time a sum of £—— in his possession or power. And the said defendant refuses to set forth in what manner he paid the said sum of £—— and when and from whom he received or obtained the same or by what means he was enabled to make such payment. And at other times the said defendant pretends that the said T. D. was indebted to him at the time of executing the said assignment in the said sum of £——, and that the said indenture of assignment was executed by the said T. D. in consideration of the said debt, but when and how the said T. D. so became indebted to him, the said defendant refuses to discover. And your orator charges that if the said T. D. had at any time been indebted to the said W. C. he had by some means fully satisfied the debt. And your orator further charges that the said T. D. first proposed to the said defendant the making of the said assignment, and that the said defendant at the time the same was executed knew or believed or had some reason to know believe or suspect that the said T. D. was in embarrassed circumstances and was about to become bankrupt; and the said defendant \*accepted such assignment with a view to the advantage of the said T. D. or some part of his family. And your orator further charges that it was agreed or understood that the said defendant was not to hold the said lease for his own sole benefit, and as his own sole property. And your orator further charges that the said lease was of much greater value than the said sum of £—— and was in fact worth £——. And your orator further charges that the said T. D. caused the said assignment to be registered on the day it was executed; and that the solicitor of the said T. D. at his request paid an expedition fee for the registering thereof. All which actings, &c. [see form VI. p. 5, *interrogating to the stating and charging parts.*] And that the said defendant may answer the premises. And that the said indenture of assignment of the —— day of —— may be declared void, as fraudulent against your orator and the rest of the creditors of the said bankrupt; and that the said W. C. may be decreed to deliver up the said assignment to your orator to be cancelled, and may also deliver up to your orator the said indenture of lease. [And for further relief, see form VIII. p. 5.] May it please, &c. [see form No. 1, p. 6.]

*Pray subpoena against W. C.*

Pretence that the consideration was paid.  
Charge the contrary.  
Defendant in poor circumstances.

Pretence that the bankrupt was indebted to the defendant.

Charge that the debt had been satisfied. That the bankrupt made the first proposals to assign the premises, and that the defendant knew that the bankrupt was insolvent.

[\*100]

Charge as to the value of the lease.

Prayer.

XXXII. *Bill by the assignees of the estate of a bankrupt, who was entitled to one moiety of his father's residuary estate, against the executrix and trustees of the will, and the son, who was entitled to the other moiety, the dividends of the entirety being given to the widow for life;—Prayer for an account of testator's personal estate, debts, and legacies, that the residuary estate may be ascertained, and one moiety carried over to the bankrupt's account, subject to the testator's widow's life interest therein, and that an inventory may be made of the effects bequeathed to her for her life and deposited with a master.*

Testator's will.	of, &c. J. H. G. of, &c. and R. M. of, &c. That T. B. late of, &c. duly made and published his last will and testament in writing bearing date on or about — and thereby amongst other things gave and bequeathed, &c. As in and by, &c. And your orators further show
His death.	unto your lordship, that the said testator departed this life on or about the — day of — without having altered or revoked his said will leaving the said M. B. his widow and the said W. B. and T. B. in the said will named, him surviving, and the said M. B. hath
Probate by the executrix.	since his death duly proved the said will in the proper Ecclesiastical Court and taken upon herself the executorship thereof; and the said M. B. together with the said H. B. and R. A. who interfered in the administration of the property of the said testator, under and by virtue of the trusts of the said will possessed themselves of the personal estate and effects of the said testator to a large amount and value, and much more than sufficient to pay and satisfy his funeral expenses just debts and legacies; and the said M. B. H. B. and
[ *101 ] Loan of testator's moneys to his son W. B. and to other persons.	*R. A. lent and advanced to the said W. B. the son of the said testator (another defendant hereto) the sum of £—— part of the said testator's residuary estate, and they also lent and advanced to other persons other parts of the said testator's residuary estate upon personal security instead of investing the same in government or real security, and the said defendants permitted a part of the said testator's estate which was owing at the time of his death upon personal security to remain outstanding upon such security whereby the same has been lost, and in particular a sum of £—— and interest due from I. C. of, &c. was permitted to remain unpaid, although the same might have been recovered by the said defendants after the death of the said testator if due diligence had been used herein; and the said I. C. hath lately absconded and is become insolvent. And your orators further show unto your lordship that a commission of bankrupt under the great seal of Great Britain bearing date on or about, &c. hath been awarded and issued against the said T. B. the son, who hath been thereupon duly found and declared a bankrupt, and the usual assignment of his estate and effects hath been duly made and executed to your orators who were duly chosen by the creditors as the assignees of the said bankrupt's estate.(3) And
Other moneys lost by defendant's neglect in not calling in the same.	
Commission of bankrupt against testator's son.	

(3) See note (1), ante, p. 94.

your orators further show unto your lordship that they have by themselves and their agents repeatedly applied to the said M. B. H. B. and R. A. and requested them to come to a full and true account with your orator, for the personal estate and effects of the said testator, and to invest and secure the clear residuary estate of the said testator possessed or received by them, or which but for their wilful default or neglect might have been so possessed or received, so that the same might be forthcoming at the death of the said M. B. for the benefit of your orators as assignees as aforesaid and such other persons as may be interested therein. And your orators well hoped that the said M. B. H. B. and R. A. would have complied with such your orators' reasonable requests as in justice and equity they ought to have done. BUT NOW SO IT IS, &c. [see form IV. p. 5.] And the said defendants sometimes pretend that the personal estate and effects of the said T. B. the said testator were small and inconsiderable and not more than sufficient to pay and satisfy his funeral expenses debts and legacies; and that they have applied all such personal estate and effects in a due course of administration. Whereas your orators charge the contrary thereof to be the truth, and so it would appear if the said defendants would set forth as they ought to do a full and true account of all and every the personal estate and effects of the said testator which have been possessed or received or but for their wilful default or neglect might have been possessed or received by them the said defendants or either of them or by their or either of their order or to their or either of their use and of their application thereof. And your orators further charge that when the clear residuary estate of the said testator is ascertained, a moiety thereof ought to be invested in this honorable court to the account of "the moiety of T. B. the \*son of the residuary estate of the said testator T. B., in order that your orators as the assignees of the said T. B. for the benefit of his creditors may be the better able to sell and dispose of the expectant interest of the said T. B. in such moiety upon the death of the said M. B.; and your orators charge that in computing such moiety credit ought to be given for the sum of £—— advanced by the said defendants M. B. H. B. and R. A. to the said W. B. as aforesaid as being advanced out of the moiety to which the said W. B. will be entitled upon the death of the said M. B. And your orators further charge that the said defendant M. B. ought to make out an inventory of the said testator's household goods plate linen and china to which she is entitled for her life; and such inventory ought to be signed by the said M. B. and deposited with one of the masters of this honorable court for the benefit of all parties interested therein. All which actings, &c. [see form VI. p. 5, *interrogating to the stating and charging parts.*] And that the said defendants may answer the premises. And that an account may be taken of the personal estate and effects of the said testator possessed by or come to the hands of the said defendants M. B. H. B. and R. A. or any or either of them, or to the hand of any other person or persons by their or either of their order or to their or either of their use, or which but for their wilful default or neglect might have been pos-

Applications.

Pretence that the personal estate is insufficient.

Charge the contrary.

Charge that one moiety of the clear residuary estate

[ \*102 ]

ought to be invested and carried to the bankrupt's account, to enable the plaintiffs to sell his expectant interest.

Charge as to the loan made to W. B.

Charge that the widow ought to make out an inventory of the property bequeathed to her for life.

Prayer.

sessed or received by them; and also an account of the testator's funeral expenses debts and legacies, and that the said testator's personal estate may be applied in payment thereof in a due course of administration. And that the residue and clear surplus thereof may be ascertained and secured by and under the direction of this honorable court; and that one moiety thereof may be carried to an account "the moiety of T. B. in the residuary estate of the testator T. B." subject to the payment of the interest or dividends thereof to the said M. B. during her life; and that the said defendant M. B. may make out an inventory of the said household goods plate linen china and other effects of the said testator given to her the said M. B. for her life, and that such inventory may be signed by the said M. B. and deposited with one of the masters of this honorable court. [And for further relief, see form VIII. p. 5.] May it please, &c. [See form No. 1, p. 6.]

*Pray subpoena against M. B.*

*H. B. R. A. and W. B.*

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*\*XXXIII. Bill by the assignee of a bankrupt's estate, for an account of mercantile dealings and transactions between the defendants and the bankrupt, and for payment of the balance due from the defendants.*

[ \*103 ]  
Bankrupt in  
business as a  
merchant.  
Defendant J.  
P. G. also a  
merchant and  
agent to the  
other defend-  
ants carrying  
on business  
under two  
firms, and al-  
lowed by them  
a commission  
on all consign-  
ments.  
The bankrupt  
being about to  
ship goods J.  
P. G. applied  
to procure the  
consignment  
for the firm of  
G. H. and T.

Humbly complaining sheweth unto your lordship your orator J. A. of, &c. assignee of the estate and effects of W. V. B. late of, &c. \*bankrupt deceased.(4) That the said W. V. B. during his life-time and before his bankruptcy carried on business at L. as a foreign merchant, and that J. P. G. of L. aforesaid, also carried on business at the same place as a merchant under the firm of J. P. G. and Co.; and that the said J. P. G. was the agent in L. of G. H. and T. who then carried on and now carry on business in copartnership in L. under the firm of G. and H., and at R. under the firm of G. H. and T.; and the said J. P. G. was allowed by the said firms a commission upon all consignments which he procured to the said house at R. And your orator further sheweth that in the month of May 1820 the said W. V. B. was about to ship certain goods for R., and that the said J. P. G. was desirous of obtaining the consignment for the said house of G. H. and T., and he thereupon promised himself to make advances to the said W. V. B. and he also engaged that bills on account of the goods shipped should be accepted in favor of the said W. V. B. by the said Messrs. G. and H. of L., on condition that the goods should be consigned to G. H. and T. and the returns made to the said Messrs. G. and H. of L. or to the said J. P. G. in order that they might deduct thereout the amount of their advances. And your orator further sheweth that the said W. V. B. assented to the terms so proposed to him, and that the said J. P. G. accordingly

(4) See note (1), ante, p. 94.

introduced the said W. V. B. to the said Messrs. G. and H. and that on the 31st day of May 1820 the necessary arrangements for the dealings between the said W. V. B. and the said Messrs. G. and H. hereinafter mentioned being concluded, the said W. V. B. consigned various packages of wool and other goods at the house of the said Messrs. G. H. and T. at R., and drew upon them bills of exchange to a small amount against the consignments, and at the same time remitted to them the bills of lading and the original invoice of the goods to the said Messrs. G. and H. in L. And your orator further sheweth that a sale was made of the said goods at R. by the said Messrs. G. H. and T. and the proceeds of the sale were invested in coffee, and such coffee was consigned by the said Messrs. G. H. and T. to the said Messrs. G. and H. or to the said J. P. G. on account of the said W. V. B., and such coffee was sold and the proceeds thereof received by the said Messrs. G. and H. or by the said J. P. G. And your orator further sheweth unto your lordship that between the 31st May 1820 and the time of his becoming bankrupt hereinafter mentioned, the said W. V. B. made in a similar way at different times very many consignments of goods to a large amount in value to the said Messrs. G. H. and T. in R., and in respect thereof drew bills on the said J. P. G. and on the said Messrs. G. and H. in L., and the said Messrs. G. H. and T. made sale of the goods so consigned to them and invested different parts of the proceeds in the purchase of other merchandise being principally coffee, and consigned some part of the return cargoes to the said Messrs. G. and H. in L., and the other parts thereof to the said J. P. G. at L., and the said Messrs. G. and H. and J. P. G. respectively made sale of the produce so consigned to them. And your orator further sheweth \*unto your lordship that by the arrangement so made as aforesaid between the said W. V. B. and the said J. P. G. and Messrs. G. and H., the proceeds of the said W. V. B.'s consignments, whether the same were remitted to the said Messrs. G. and H. or to the said J. P. G., were held liable to answer the advances of both firms to the said W. V. B., and one general account was kept of such adventures, and the said Messrs. G. and H. rendered accounts to the said J. P. G. of the goods sold by them, and the said J. P. G. rendered accounts to the said Messrs. G. and H. of the goods sold by him on account of the said W. V. B., and they rendered one joint account thereof, so far as any accounts were rendered by them to the said W. V. B. And your orator further sheweth unto your lordship that at the time of his bankruptcy hereinafter mentioned, there were moneys to a considerable amount in respect of the transactions hereinbefore mentioned in the hands both of the said J. P. G. and of the said Messrs. G. and H. due to the said W. V. B.; and there were also considerable quantities of goods unsold belonging to the said W. V. B. in the hands of the said Messrs. G. H. and T. at R., which have since been sold and the proceeds remitted to the said Messrs. G. and H. and J. P. G. or one of them; and there is now a considerable sum of money due and owing from the said G. and H. and the said J. P. G. to the estate of the said W. V. B. And your orator further sheweth unto your lordship that previously to the month of August 1821 the

Arrangements completed.

Bankrupt consigned goods to the firm at R. and drew bills upon them.

Sale of the goods and proceeds invested in coffee, which was sold, and the proceeds received by the defendants.

Other consignments made to a large amount.

[ \*104 ]

The proceeds of the bankrupt's consignments held liable to answer the advances of both firms.

One joint account rendered to the bankrupt.

At the time of the bankruptcy large sums of money and quantities of goods were in the hands of the defendants.

Commission of bankrupt

against W. V. B. said W. V. B. became bankrupt, and that a commission of bankrupt under the great seal [*stating the appointment of assignees and the usual assignment to them—that one of the assignees became a bankrupt, whereupon the plaintiff became sole assignee.*] And your orator further sheweth that he has by himself and his agents repeatedly applied to the said G. and H. the said T. being abroad, and also to the said J. P. G. and requested them and each of them to come to a full and true account with your orator in respect of their aforesaid dealings with the said W. V. B., and to render to your orator a distinct account of such dealings, so that your orator may be enabled to judge of the result thereof, and to pay to your orator what is due to him as such assignee as aforesaid upon the balance of such accounts. And your orator well hoped that the said G. H. and J. P. G. would have complied with such your orator's reasonable requests as in justice and equity they ought to have done. BUT NOW so IT IS may it please your lordship that the said G. and H. and J. P. G. combining and confederating together with the said T. and with divers other persons, &c. [*see form IV. p. 5.*] refuse so to do, sometimes pretending that they have already made to your orator full true and particular accounts of all their dealings and transactions with the said W. V. B. Whereas your orator charges that notwithstanding the said confederates have rendered some accounts to your orator, yet the same are not full or accurate accounts, and that the same do not contain an account of all sales of goods sold by the said Messrs. G. H. and T. on account of the said W. V. B. at R. or of the invoices of goods bought there on account of the said W. V. B. or of the sales of such returns homeward, or a clear and regular statement of the account current between the said several parties

Plaintiff and another appointed assignees. Plaintiff's co-assignee also became bankrupt. Applications to the defendants.

Pretence that defendants have made out full accounts. Charge that the accounts rendered are not complete and charge as to particular matters of account.

[\*105] Charge repeated applications to render other accounts.

That the defendants are indebted to the bankrupt's estate;

And that the same would appear if the accounts required were set forth.

\*respectively and the said W. V. B. And your orator charges that repeated applications both verbally and in writing have been made by your orator's solicitor to the said defendants to render such accounts, but that such accounts never have been rendered, and that the said Messrs. G. and H. have refused to pay any attention to or to take any notice of the applications so made to them, and that your orator therefore has been and is unable to ascertain the state of the accounts between the said W. V. B. and the said defendants; but your orator charges that the said J. P. G. and the said G. H. and T. as such partners as aforesaid are respectively indebted to a large amount to the estate of the said W. V. B.; and that there is a large quantity of goods now in the hands of the said Messrs. G. H. and T. belonging to the said W. V. B., or however a large quantity of goods of which no accounts have ever been rendered; and so your orator charges it would appear if the said defendants would set forth as they ought to do a full true and particular account of all goods wares and other merchandize property and effects remitted and sent by the said W. V. B. in his life-time and received by the said Messrs. G. H. and T. at R., and when such goods and each part thereof were and was received, and when and to whom and at what prices such goods and each parcel thereof were and was sold and what sums of money were received and when and from whom and in what manner by the said Messrs. G. H. and T. on account of such



sales and each of them, and how such proceeds and every part thereof were and was applied and what goods were purchased therewith for return cargoes, and when and from whom and at what prices such goods were purchased, and what moneys or securities for moneys or goods were remitted to the said J. P. G. and to the said Messrs. G. and H. respectively on account of the consignments so made by the said W. V. B. as aforesaid, and when such moneys or securities for money or goods respectively were received by the said defendants respectively, and how and when and to whom and at what prices such goods were disposed of by them, and what moneys had been received by them respectively, and when and from whom on account thereof, and what is the balance now due to them respectively on account of the aforesaid dealings and transactions, and what parts of the said goods wares merchandize and effects consigned by the said W. V. B. as aforesaid to the said Messrs. G. H. and T. remain unsold, and the natures, kinds, quantities, qualities full real and true values of all and every part thereof, and what is become thereof.

And your orator charges that the said J. P. G. insists that there is a large amount due to him from the said W. V. B., and he insists that he is entitled to be paid the same out of the moneys due from the said Messrs. G. H. and T. to the said bankrupt's estate; and the said Messrs. G. H. and T. on the other hand insist that there is a balance due to them from the said bankrupt's estate, and that they are entitled to be paid the same out of what may be due to the said estate from the said J. P. G. Whereas your orator charges that in fact there is a balance due to the said estate from each of the said defendants. And your orator charges that the said defendants respectively have in their possession or power divers books of account \*accounts invoices bills of lading bills of exchange policies of insurance vouchers letters copies of letters papers and writings relating to the several matters aforesaid or some of them, and by which if produced the truth thereof would appear, but they refuse to produce the same; and the said T. is resident at R. and out of the jurisdiction of this court. All which actings, &c. [*see form VI. p. 5, interrogating to the stating and charging parts.*] And that the said defendants may answer the premises; and that an account may be taken of all the dealings and transactions in respect of the several adventures hereinbefore mentioned between the said W. V. B. and the said J. P. G. and the said G. H. and T. as such partners as aforesaid; and that the said defendants may be decreed to pay to your orator as the assignee of the estate and effects of the said bankrupt what may be found due from them respectively on taking such accounts. [*And for further relief, see form VIII. p. 5.*] May it please, &c. [*See form No. 1, p. 6.*]

Claims by the defendant of balances due to them, and of a right of retainer.

Charge that balances are due from the defendants.

Charge as to books of account, &c.

[ \*106 ]

Prayer.

*Pray subpoena against Messrs. G. and H. and J. P. G. and subpoena against T. when he comes within the jurisdiction of the court.*

XXXIV. *Bill by the assignees of a bankrupt's estate (one of whom had been appointed assignee in the place of a former assignee become bankrupt,)(5) for an account of the proceeds of a shipment of goods made by the bankrupt, and for a writ of ne exeat regno.(6) The observations of the learned counsel who drew the bill are added.*

Shipment of goods made by T. C.

States that T. C. some time in the year —, shipped and sent out to D. on board the brig G. a considerable quantity of upholstery, cabinet, and stationery goods, to the value of £300 and upwards, which goods the said T. C. delivered to and placed under the care of J. B. \*a defendant hereinafter named, who sailed in the said brig in the month of — to D.

[ \*107 ]

Same placed under the care of J. B. as agent for the purpose of sale.

That the said goods were so delivered to the said J. B. and placed under his care for the purpose of their being sold by him on the account of the said T. C. and as his agent in that behalf, and the said J. B. accordingly undertook to sell the said goods and to account for the proceeds to the said T. C.

Sale of part of the goods by J. B. who received the proceeds, and rendered no account.

That on the arrival of the said brig at D. the said J. B. sold and disposed of a considerable part of the said goods and received the money arising from such sale, but he hath never accounted for the same to the said T. C., and the said J. B. being about to leave D. did on or about the — day of — deliver or cause to be delivered the residue of the said goods to M. D. (a defendant hereinafter named) who then carried on business at D. under the firm of H. G. and Co., and the said J. B. appointed the said H. G. and Co. to act as the agents of him the said J. B. in respect of the said goods, and to sell the same and receive the proceeds thereof, and remit the same to him. And the said M. D. accordingly sold the said goods and received the sum of £— but he has never accounted to the said J. B. or the said T. C. for the value thereof.

Delivery of the residue of the goods to M. D. as agent of J. B.

Sale by M. D. but no accounts rendered.

Commission of bankrupt against T. C.

That the said T. C. has since become bankrupt, and a commission of bankrupt, bearing date the — day of —, was duly awarded against him, and he was duly found and declared a bankrupt under

(5) By the 67th section of the 6 Geo. 4, c. 16, it is enacted, that whenever an assignee shall die, or be removed, no action at law or suit in equity shall be thereby abated, but the court in which any action or suit is depending may upon the suggestion of such death or removal, and new choice of an assignee or assignees, allow the name of the surviving or new assignee or assignees to be substituted in the place of the former; and that such action or suit shall be prosecuted in the name or names of the said surviving or new assignee or assignees in the same manner as if he or they had originally commenced the same.

(6) It is not necessary that the bill should pray the writ, as the intention to go abroad may arise in the progress of a cause: see 18 Ves. 353.

The writ of *ne exeat regno* being considered in the nature of equitable bail, will not be granted upon a legal demand, nor under circumstances which would not entitle the plaintiff to bail at law; however the court will grant the writ in the case of a balance of an account admitted by the defendant to be due, but disputed by the plaintiff, although the party may be held to bail at law, this being considered a case of exception to the general rule; see *Jones v. Sampson*, 8 Ves. 593; *Haffey v. Haffey*, 14 Ves. 261; *Flack v. Holm*, 1 Jac. & W. 405; *Blaydes v. Calvert*, 2 Jac. & W. 213; *Gardner v. —*, 15 Ves. 443; *Collinson v. —*, 18 Ves. 353; *Howden v. Rogers*, *Dick v. Swinton*, 1 Ves. & B. 129, 371; Mr. Beames's brief View of the Writ of *Ne exeat Regno*.

the same, and a provisional assignment having first been made, your orator D. M. of L. and A. F. were chosen assignees of the estate and effects of the said bankrupt, and the usual assignment was executed to them accordingly by the major part of the commissioners under the said commission and by the provisional assignee.

That at a meeting of the creditors of the said bankrupt duly held for that purpose on the 9th day of August — pursuant to notice thereof duly given in the London Gazette, it was amongst other things unanimously resolved that, &c. [*stating the authority given to the assignees.*](7)

That the said A. F. having become bankrupt was discharged from being an assignee under the said commission, and your orator W. O. was duly chosen an assignee in his stead, and the estate and effects of the said bankrupt have been since duly assigned to and vested in your orators.

That your orators have made frequent applications to the said J. B. and M. D. and requested them to account with your orators as such assignees as aforesaid for the value of such parts of the said goods as have been sold or disposed of by them respectively, and to pay unto your orators what is due to them in respect thereof. BUT NOW SO IT IS may it please your lordship that the said J. B. and M. D. combining, &c. [*see form IV. p. 5,*] they refuse to comply with your orators' said requests. And your orators charge that the said J. B. as well as the other defendant M. D. is answerable to your orators for the proceeds of the said goods so sold as aforesaid by the said M. D. or for the value of such goods. And your orators charge that the said defendants respectively have in their power divers accounts, &c. And your orators charge that the said defendant M. D. for the purpose of and with a view of defeating the claim of your orators as such assignees as aforesaid against him the said M. D. in respect of the transactions hereinbefore mentioned, intends to quit this kingdom and to remain out of the jurisdiction of this court unless he shall be restrained from so doing by the authority of this honorable court. And your orators charge that the said M. D. is liable to account with your orators for the goods of the said T. C. as sold by him as aforesaid, and is equitably indebted to your orators in the amount thereof. And your orators charge that if the said M. D. shall be permitted to go out of the country without giving security to answer what may be found due to your orators the said debt will be lost to your orators. TO THE END therefore, &c. [*see form VI. p. 5, interrogating to the stating and charging parts.*] And that the said defendants may answer the premises, and that an account may be taken under the direction of this honorable court of all and every sum and sums of money which hath or have been received by the said defendants or either of them for or in respect of such of the said goods as have been sold by them respectively, or which without their default might have been received. And that the said J. B. as well as the other defendant may be declared to be answerable for what shall appear to have been received by the said

Provisional assignment made.

D. M. and A. F. appointed assignees and assignment made to them. Resolution at a meeting authorizing the assignees to sue, &c.

One assignee became bankrupt, and a new one chosen.

Applications to the defendants to account.

Charge that J. B. and also M.

[ \*108 ]

D. are liable for the proceeds of the goods sold by the latter, and as to books of account, &c.

Charge that M. D. intends to quit the kingdom.

That he is liable to account with the plaintiffs, and is equitably indebted to them.

That if he quits the country the debt will be lost.

Prayer.

(7) See note (1), ante, page 94.

M. D. or for what without his default might have been received by him. And that what shall upon the taking of such account be found due from the said defendants to the said T. C. may be paid to your orators as such assignees as aforesaid. [And for further relief, see form VIII. p. 5.] May it please, &c. [see form No. 1 and 6, p. 6 and 7, and note (r), see also form XI. ante, p. 29.]

*Pray subpoena against J. B. and  
subpœna and ne exeat regno  
against M. D.*

*Observations on the above bill by the learned counsel who drew it :*

"It is doubtful whether a *ne exeat regno* can be obtained in this case; it cannot if there be a solvent partner resident in this country or if the debt be a legal debt. If the goods were placed in the hands of Messrs. H. and Co. to sell on account of C., I apprehend an action may be brought by C.'s assignees and Mr. D. held to bail.

[ \*109 ]

\*5. A CERTIORARI BILL.(1)<sup>c</sup>

XXXV. *Bill for a writ of Certiorari to remove proceedings from the Lord Mayor's Court in London, on the ground of one of the plaintiff's witnesses residing out of the jurisdiction of that Court.*(2)

In Chancery.

To, &c.

That a material witness is

Humbly complaining sheweth unto your lordship your orator A. B. of —, That, &c. [stating the proceedings in the Lord

(1) It may seem improper to consider *certiorari* bills under the head of bills praying relief, but as they always allege some incompetency of the inferior court, or injustice in its proceedings, and seek relief against that incompetency or injustice, they seem more properly to come into consideration under this head than any other.

In case the court of Chancery removes the cause from the inferior court, the bill exhibited in that court is considered as an original bill in the court of Chancery, and is proceeded upon as such; Lord Redesdale's Tr. Pl. p. 50.

(2) The writ of *certiorari* may be applied for on various grounds, as that the cause is out of the jurisdiction of the inferior court, or that the defendants or the witnesses live out of its jurisdiction, and are unable owing to infirmities, or the distance at which they live, to attend such inferior court, or cannot be compelled by the process of such court, to be examined there; and the bill must allege some special ground for the application for the writ; 1 Madd. Ch. Pr. 182.

When the party has filed his *certiorari* bill, on motion and a certificate from the Six Clerk that the bill is filed; the writ will be granted. In the case of *Pierce v. Thomas*, Jac. R. 54, a writ of *certiorari* had been issued as of course, without any affidavit or application to the court, and the Lord Chancellor quashed the writ.

In note (b), p. 182, of the 1st vol. Madd. Ch. Pr. 2d. edit. it is stated that a *certiorari* bill cannot be filed by the plaintiff in the inferior court, and so also in Jacob's

<sup>c</sup> A copy of the record must accompany every application for a *certiorari*. *Triplett v. Tyler*, 4 Hen. & Munf. 413.

*Mayor's Court.*] And your orator further sheweth unto your lordship that one E. F. a material witness for your orator concerning the premises, did at the commencement of the said suit live and \*reside and still lives and resides at W. out of the jurisdiction of the said lord mayor and his brethren the aldermen of the said city of L., whereby your orator has no remedy to compel the said E. F. to be examined or to give his testimony in the said cause in the said city of L. concerning the premises. IN CONSIDERATION whereof and forasmuch as for want of jurisdiction in the said lord mayor and his brethren the aldermen of the said city of L. over your orator's witnesses your orator is remediless there, MAY IT PLEASE your lordship therefore to grant unto your orator a writ of *certiorari* to be directed to the said lord mayor of the said city of L. and his brethren the aldermen of the said city, thereby commanding them to certify and remove the record of the said bill or plaint<sup>(3)</sup> with

resident out of the jurisdiction of the Lord Mayor's Court.

[ \*110 ]

Ch. Pr. 1 vol. 680, and Wy. Pr. Reg. 101; but in the case of *Edwards v. Bowen*, 2 Sim. & Stu. 515, Sir J. Leach, Vice Chancellor, decided otherwise; in that case the plaintiff commenced a replevin in a county court in Wales, and afterwards removed the proceedings into one of the courts of Great Sessions by the writ of *recordari facias loquelam*. He then applied to the court of Chancery for a *certiorari* to remove the proceedings into the court of K. B., and it was objected that a *certiorari* did not lie in such a case, or lay only upon sufficient ground being shown to the court which had not been done there; but the Vice-Chancellor, after observing that in replevin the action must commence in the Sheriff's court, and that in the text writers there is no qualification stated as to the right of the plaintiff to the writ of *certiorari* in all cases, and that the subject is not to be deprived of a beneficial writ in the particular case because he is not prepared with a precedent precisely in point, granted the writ.

There are several methods by which replevin may be made, but the most usual is by levying a plaint in the Sheriff's court of the county wherein the distress is taken. The Sheriff's court not being a court of record, if the plaint be removed, it must be done by an original writ of *recordari facias loquelam*, but if in a court of record competent to hold plea in replevin, the removal must be by *certiorari* issuing either out of the court of K. B. or the court of Chancery. The Sheriff's court of London is not, any more than other courts of the Sheriff, a court of record; therefore if a writ could be directed to this Court, it must be a *recordari facias loquelam*. But although all plaints in replevin made in London are in the Sheriff's court, they cannot be removed but through the medium of the court of Hustings which is a court of record. Plaints therefore in London must be removed by writ of *certiorari* directed by the Mayor, aldermen, and sheriffs of London; see Ashley on Attachment, 139, 2d edit. *Woodcraft v. Kinaston*, 2 Atk. 317.

(3) Where a *certiorari* issues in order only to use the record as evidence, then the tenor of the record, if returned, is sufficient as evidence of the record, to countervail a plea of *nul tiel record*; but when the record is to be proceeded upon the record itself must be returned, *Woodcraft v. Kinaston*, 2 Atk. 317; in this case the writ issued to remove a plaint of replevin in London, in order to be proceeded upon in a superior court and directed the tenor of the record to be removed and not the record itself and the Lord Chancellor superseded the writ. So also in *Pierce v. Thomas*, Jac. R. 54, cited ante, p. 109, the writ issued to remove the proceedings in an action of assumpsit, depending in the court of Great Sessions for the county of Glamorgan, and directed the tenor of the record instead of the record itself to be returned, the Lord Chancellor held the objection fatal, and quashed the writ. There is no difference when the proceedings upon the record are to be removed, whether it is before judgment or after; in both cases the record itself must be removed. *Woodcraft v. Kinaston*, 2 Atk. 317.

The student cannot fail to have observed that in all the cases previously cited, the applications for the writ of *certiorari* were to remove common law proceedings in the inferior courts, but if it is intended to remove the proceedings on the equity side of an inferior court having limited jurisdiction, it appears more correct that the prayer for the writ of *certiorari* should be "to remove the bill and other proceedings" in the cause commenced in such inferior court, and not praying "to remove the record," as the inferior courts when proceeding by English bill cannot, it is conceived, be in

the process and all proceedings thereon into this honorable court;(4) and to stand to observe and perform such order and decree therein as to your lordship shall seem meet and the circumstances of the case may require. And your orator shall ever pray, &c.

[ \*111 ]

\*6. BILL TO COMPEL THE ACCEPTANCE OF A COMPOSITION.

XXXVI. *Bill by insolvent partners and certain persons who had been appointed inspectors, and had also become sureties for them for the payment of certain instalments, against a creditor and the executors of the deceased trustee under a deed of trust alleged to have been executed by the other defendant the creditor for the benefit of his creditors,—to compel them to accept a dividend declared by the inspectors, and for an injunction to restrain proceedings at law for the recovery of the original debt.—The creditor defendant having signed certain articles of agreement, made for carrying into effect the resolutions come to at a general meeting of the insolvent's creditors,(1) but had refused to sign the deed founded upon those articles, under a pretence of a variation in the trusts declared, and that before he had signed the articles of agreement, he had made over all his property for the benefit of his creditors.<sup>a</sup>*

Bill states that plaintiffs W. W. and J. W. for some time before and in the year ——— carried on the business of merchants in part-

strictness considered as courts of record; to render this distinction more obvious, it may not be amiss to remind the student that the court of Chancery, *as a court of equity, is not a court of record*: Rol. Abr. 527; Yelv. 227; the jurisdiction of the court of Chancery being two-fold; the one, the ordinary jurisdiction, according to the common law, (as in the issuing of all original writs and holding pleas in certain cases,) in which the court act as, and is a court of record; the other, the extraordinary jurisdiction which is exercised under the general heads of *Fraud, Trust, and Accident*, in which the proceedings are by English bill; and although the pleadings and decrees in such proceedings when duly filed are frequently called records, yet they are not strictly records, but remain *as of record* in the court. See further on this subject, Wy. Prac. Reg. p. 102, 360; Comyns's Dig. tit. Chancery, vol. ii. p. 389; Coventry & Hughes's Dig. p. 275, 6; and see also Lord Redesdale's Tr. p. 5, 133; Madd. Ch. Pr. 1st vol. p. 1, & 23; Will. on Pl. p. 12.

(4) As no appearance or answer is required, the writ of subpœna is not prayed; Lord Redesdale's Tr. p. 49; although in the form, as inserted in the former edition of this work; p. 309, the writ of subpœna was prayed against the other parties in the cause, followed by interrogatories to the statement in the bill.

The plaintiff must prove the suggestion of his bill in fourteen days after the return of the writ, but, under special circumstances, further time may be obtained on a motion or petition supported by affidavit; 1 Madd. Ch. Pr. 183.

(1) See note (2,) ante, p. 34.

<sup>a</sup> Where a creditor enters into a composition with his debtor, with a full knowledge of all the facts, and fails to guard against loss, he must abide by the consequences; neither fraud nor mistake can be imputed to such an agreement. *Clarke v. White*, 12 Pet. 178. The rule cutting off underhand agreements, applies only where there is a general composition with creditors, common to all, and one of them has an un-

nership together in the town of — aforesaid; and plaintiffs having sustained divers losses and misfortunes in the course of such their business and being indebted to divers persons in a large amount, and being incapable of discharging the debts owing by them, it was resolved that a general meeting of the principal creditors residing in the said county of — should be held for the purpose of taking into consideration the state of plaintiffs' affairs, and for forming a plan to be pursued for the adjustment and settlement thereof; and such meeting was accordingly held on or about — and the greatest part of the creditors of plaintiffs attended thereat, and particularly W. H. of — aforesaid who was then a creditor of plaintiffs W. and J. W. for the sum of £—— or thereabouts; and plaintiffs also attended at that meeting, and having then laid before their creditors then present a general statement and account of their affairs, it was at such meeting unanimously resolved and agreed by and between plaintiffs and such their creditors, that plaintiffs R. H. &c. should be appointed superintendents and inspectors and have a discretionary power and control over the commerce, stock in trade, merchandize and effects of plaintiffs W. and J. W. until such time as their business and concerns in trade could be finally adjusted and settled, upon the terms and subject to the conditions, restrictions and agreements hereinafter mentioned; And in regard plaintiffs W. and J. W. were indebted to T. S. of, &c. in the sum of £—— for which they had accepted bills to that amount drawn by him on them, and that they had independently of such debt and without any consideration also accepted various bills of exchange drawn by him on plaintiffs in favor of different persons to the amount of £—— which then \*remained unpaid, it was also resolved and agreed that the said T. S. should exonerate and discharge plaintiffs W. and J. W. and their estate and effects from the said accepted bills and should produce and deliver up all the said accepted bills to the said inspectors or some of them in order to be cancelled or destroyed or otherwise made void, and that in consideration thereof and not otherwise the said T. S. should have and be entitled to receive out of the effects of plaintiffs W. and J. W. a dividend after the rate of — in the pound in respect of his said debt so soon as the produce of the effects of plaintiffs W. and J. W. would extend to pay such dividend, and also a dividend after the rate of — in the pound to their other creditors; and it was also resolved and agreed

Plaintiffs W. W. and J. W. became insolvent.

Meeting of their creditors.

Resolved that inspectors should be appointed.

[ \*112 ]

That T. S. a creditor should deliver up certain bills of exchange and be entitled to certain dividends.

derhand agreement to receive a larger per centage than the others; such agreement is fraudulent and void. *Clarke v. White*, 12 Pet. 178. In cases of composition the debtor must pay punctually, for until performance, the creditor is not bound. *Clarke v. White*, 12 Pet. 178. Where a debtor, retaining possession of his effects, makes a compromise with his creditors, who rely wholly or principally upon his statements for a knowledge of his affairs, any material misrepresentation on his part will avoid the compromise; and the creditors are not bound to look for information elsewhere. *Irving v. Humphrey*, Hopk. 284. See further, as to the general principles regulating composition with creditors, *Kahn v. Gumberts*, 9 Ind. 430; *Cutler v. Reynolds*, 8 B. Monr. 596. A release procured from a creditor by a fraudulent misrepresentation, does not bar his claim. *Phettiplace v. Sayles*, 4 Mason, 312; and an additional security, or an agreement for such, not provided for in the deed of composition, and secretly given to one of the creditors, is illegal and void as against the others. *Breck v. Cole*, 4 Sandf. Sup. Ct. 79; *Patterson v. Boehm*, 4 Barr, 507.

that the said T. S. should after such dividend made be entitled to receive in the proportion of — in the pound upon his said debt of £—, and the other creditors — in the pound upon their respective debts until the said sum of £— should be entirely paid off, but that if the money arising from the said estate and effects should fall short of paying the whole demand of said T. S. and the said other creditors, then and in such case the moneys arising from the said estate and effects should be paid and divided according to the proportions aforesaid.

Articles of agreement prepared,

That on or about, &c. articles of agreement in writing bearing date, &c. and made between, &c. were prepared to the following purport and effect: whereby after reciting the several resolutions and agreements hereinbefore set forth it was expressly agreed that, &c. &c. And plaintiffs and the several other persons whose names and seals were thereunto subscribed did thereby promise undertake and agree to and with each other to do any other lawful act whatever for ratifying, confirming and establishing the aforesaid agreement terms and proposals.

and executed by most of the creditors.

That plaintiffs and most of the creditors of the said plaintiffs W. and J. W. and particularly the said W. H. on or soon after the said — day of — signed such agreement.

A meeting of certain bill-holders called.

That plaintiffs W. and J. W. being at the time of signing said articles of agreement liable by their acceptance of such bills of exchange drawn on them by the said T. S. as aforesaid, and which bills to the amount of £— had been so accepted for valuable considerations, as plaintiffs were then indebted to the said S. to that amount but the rest of such bills were so accepted without consideration and only for the honor of said T. S.; and all which said bills as well as those accepted for honor as those accepted for valuable considerations, the said S. H. had negotiated and endorsed for valuable considerations, and were then in the hands of divers persons residing in L. and B., a meeting was in the month of — called and had in L. of the holders of such bills, or their agents in order to settle and compound the same demand on the estate of W. and J. W.

Proposals made for paying them a composition by instalments.

[ \*113 ]

Plaintiffs R. H. &c., agreed to become sureties to them.

That plaintiffs W. and J. W. by desire of the said inspectors attended such meeting and it was thereupon proposed and agreed that said bill-holders who in person or by their agents attended said meeting should be paid after the rate of — in the pound on the sums made payable on their respective bills, and that such composition \*should be paid by instalments, (that is to say,) — and — in the pound on, &c. the further sum of — and — in the pound on —, and the remaining — and — in the pound on —, and that plaintiffs R. H., &c. should enter into a joint and several covenant together with plaintiffs W. and J. W. to them the said bill-holders for the due payment thereof in L. and that such composition of — in the pound to be so paid should be in full discharge of the plaintiffs W. and J. W. from all demands on them or their estate under or by virtue of such bills of exchange.

The amount due to such bill-holders.

That all the moneys secured or made payable by the several bills of exchange aforesaid which were at the time of the said last mentioned meeting in the hands of persons who by themselves or their



agents attended such meeting amounted in the whole to the sum of £—— and no more, the rest of such bills having been taken up or discharged by or by the procurement of the said T. S.; And as the composition after the rate of —— in the pound on such sum of £—— would amount to £—— which would exceed the sum of £—— which was the whole amount of the said bills for acceptance, whereof plaintiffs W. and J. W. gave valuable considerations as aforesaid by the sum of £—— the said T. S. agreed that plaintiffs, W. and J. W. or their assignees should be creditors on him the said T. S. for such overplus of £——, and which agreement appeared clearly to be for the mutual advantage of themselves and the rest of the creditors of plaintiffs W. and J. W.; wherefore plaintiffs R. H. &c. consented thereto and to become security for the payment of the said composition after the rate of —— in the pound to the said bill-holders.

That in consequence of such agreement by indenture of four parts, bearing date, &c. made, &c. [*stating the indenture.*]

That plaintiffs R. H. &c. by several undertakings in writing dated, &c. did jointly and severally promise to pay to the said several bill-holders or order in L. aforesaid —— in the pound on the said bills at the days and times aforesaid, and in order to indemnify plaintiffs R. H., &c. against all costs and charges on account of the said indenture of covenants and undertakings or any of them, and for raising a fund and enabling them to discharge the said composition of —— in the pound to the said several bill-holders pursuant to the said deed and covenants, as also for the better collecting and getting in of the said debts and effects of plaintiffs W. and J. W. for the purpose of discharging all the debts owing by them, the said plaintiffs W. and J. W. agreed to make a general assignment of all their partnership debts and effects; and the plaintiff W. being seised in fee of a warehouse or building situate, &c. agreed to convey and assign the same freehold premises for the purpose of discharging his own debts and the debts of the said copartnership. And thereupon by indenture tripartite bearing date, &c. and made, &c. after reciting the several matters aforesaid or generally to the effect hereinbefore set forth, it was witnessed, &c.

That plaintiffs, R. H. &c. took upon themselves the management of the said estate and effects of plaintiffs W. and J. W. and the execution of the trusts declared by the aforesaid indentures, and sold and disposed of and converted into money all such particulars of such estate and effects as they have been able to possess collect and get in, and have out of the said moneys which have been raised thereby paid unto all the holders of the said bills of exchange —— in the pound in full of the money which they were respectively entitled to receive from the said plaintiffs W. and J. W. by virtue of such bills; and plaintiffs R. H. &c. have also paid a like dividend of —— in the pound to almost all the other creditors of the plaintiffs W. and J. W.; And that there are other parts of the estate and effects of the said W. and J. W. which still remain to be got in, and when got in, a further dividend will be paid to each of such last-mentioned creditors. And plaintiffs hoped that all the creditors of W. and

Plaintiffs R. H. &c., sign several undertakings to the bill-holders, and as a security to R. H. &c., W. and J. W. agree to assign all their debts, estates, &c.

Indenture executed to them.

R. H. &c., as inspectors and trustees sell the insolvents' property,

[ \*114 ]

and thereout pay the bill-holders and other creditors their dividends.

A further dividend remaining to be paid.

J. W. who executed the aforesaid articles and indenture, dated, &c. or either of such instruments, would have accepted such dividend of — in the pound and such future dividend as the estate and effects of plaintiffs W. and J. W. shall extend to make, in full of the debts owing from said plaintiffs W. to them respectively, and that none of such creditors would in anywise have molested plaintiffs W. and J. W. or either of them in respect of any debt owing from them to any of such creditors.

W. H. a creditor assigns his effects for the benefit of his creditors.

That the said W. H. who on the said — day of — was a creditor of the said plaintiffs W. and J. W. for the said sum of £—— and signed the aforesaid articles of that date as hereinbefore is mentioned, executed as it is alleged an assignment of all his estate and effects unto his father R. H. upon trust to dispose of the same in payment of the debts of him the said W. H. And the said R. H. departed this life in the month of — having first duly made his last will in writing, and thereby appointed his brothers G. H. and C. H. both of, &c. merchants, and D. F. &c. merchant, executors of his said will, who duly proved the same, and by virtue thereof claim title to such debt.

Death of the trustee, his will appointing G. H. C. H. and D. F. executors.

Tender to the executors of the amount of the dividend upon the debt claimed by them.

That plaintiffs R. H. &c. at several times tendered and offered to pay to them the sum of £—— being a dividend of — in the pound on the aforesaid debt due from plaintiffs W. and J. W. to the said W. H. and being the same dividend as was paid to the rest of the creditors of said W. and J. W.

Refusal by them to accept same.

And plaintiffs well hoped that the executors of the said R. H. deceased would have accepted such dividend, and that neither they nor said W. H. would in any wise have molested plaintiffs W. and J. W. or either of them in relation to the debts so owing from them to said W. H. as aforesaid. BUT NOW SO IT IS, &c. [*see form IV. p. 5.*] The said confederates

Pretence that W. H. never agreed to accept a dividend.

*Pretend* that the said W. H. did not execute such articles and indenture dated, &c. as aforesaid or either of such instruments, nor did in or by any other deed or instrument or in any other manner agree to accept of any dividend or composition in lieu or satisfaction of the debt owing to them from plaintiffs W. and J. W., and therefore they refuse to accept such dividend or composition and insist on being paid the whole of the debt originally owing from plaintiffs W. and J. W. to him the said W. H.

[ \*115 ]

Charge that he signed the agreement, that his not having signed the deed was accidental, that the deed was substantially conformable to the articles of agreement, the variation being advanced

\**Charge* that W. H. did execute the aforesaid articles dated &c. and although he did not at any time execute the said indenture dated, &c. yet his not having executed the same was casual and accidental, and that he never refused to execute such indenture and would have executed the same at any time within a long time after the date thereof if application had been made to him for such purpose, and that the said indenture was in all things substantially conformable to said articles of agreement. And although the terms in said indenture may be said in form to differ from the said articles, inasmuch as by the said indenture provision was made for payment of — in the pound to said bill-holders before payment of any money to the other creditors of plaintiffs W. and J. W., whereas by the terms of the said articles the said bill-holders were not to receive

such dividend of — in the pound until such time as such other creditors should have received a dividend of — in the pound, yet that such variation was in substance rather advantageous than prejudicial to the general creditors of plaintiffs W. and J. W. as their estate hath extended to pay so much as — in the pound to their general creditors as well as to the said bill-holders. And plaintiffs insist that all the said defendants now are effectually bound by said articles of agreement.

But then defendants sometimes allege that the aforesaid assignment from said W. H. of his said debt unto his said late father was made before the said — day of —. Whereas plaintiffs charge that in such case the said W. H. had full authority from his said father to execute or sign the said articles of agreement, and that all the trusts of the said assignment from the said W. H. (otherwise than for himself) have been fully performed, and that he is alone interested in the said debt. But nevertheless under such and the like pretences as aforesaid or some others equally unjust and unreasonable all the said defendants refuse to accept such dividend or composition, and they or some or one of them particularly said W. H. in or about Trinity Term last caused plaintiffs W. and J. W. to be arrested and held to bail in an action at law in his Majesty's Court of K. B. in the name of said H. W. for the recovery of said debt and have obtained judgment in such action. All which actings, &c. [see form VI. p. 5, interrogating to the stating and charging parts.] And that the said defendants G. H. and C. H. may be decreed to accept the said sum of £— and such other dividend as the estate and effects of plaintiffs W. and J. W. shall extend to pay, in full discharge of the said debt due from plaintiffs W. and J. W. to him the said W. H. Plaintiffs hereby offering to pay such money to such of the said defendants as shall appear to be entitled thereto. And that defendants may be restrained by the injunction of this court from all further proceedings at law against plaintiffs or any of them. [And for further relief, see form VIII. p. 5.] May it please, &c. [see forms No. 1, and 4, p. 6.]

tageous to the general creditors; And that the defendants are bound by the articles.

Pretence that the assignment by W. H. was executed before he signed the agreement.

Charge that he had authority to sign the same and that the trusts of the assignment have been performed.

Charge that defendants have commenced an action and arrested W. and J. W.

Prayer.

W. A.

\*7. BILL TO RESTRAIN THE INFRINGEMENT OF A COPYRIGHT.

[ \*116 ]

\*XXXVII. *Bill to restrain the defendant from selling a pirated edition of plaintiff's work, and for an account of the profits made by the defendant.*(1)<sup>b</sup>

States that plaintiff in or about the year —, printed and published, or caused to be printed and published, a certain book of

(1) Where the right of printing and selling a work is grounded on an act of parliament, it is not necessary to establish the right at law previously to filing a bill;

<sup>b</sup> An author has no copyright in his published works, unless he is entitled to it

which plaintiff was the author, entitled "A Selection of Hymns from the best authors, intended to be an appendix to Dr. Watts'

but if the claim to the copyright depends upon the effect of an agreement, the court will not grant an injunction against an invasion of the copyright, until the right of the plaintiff has been tried in an action; see *Wolcot v. Walker*, 7 Ves. 2, 2d edit.; 1 Madd. Ch. Pr. 150.

The proprietor of a copyright must file separate bills against each bookseller taking copies of a spurious edition for sale; but if a defendant against whom an injunction has been obtained, transfers his books to another, that person it seems may be made a party; *Dilly v. Doig*, 2 Ves. jun. 487.

And see generally on the subject of copyright and what in general amounts to a piracy, Godson on Patents and Copyright, 207, et seq.

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under the Acts of Congress. *Wheaton v. Peters*, 8 Pet. 591. The case also decides, that no reporter can have any copyright in the written opinions of the Supreme Court of the United States; and that the judges thereof cannot confer such a right on any reporter. See also, *Little v. Hall*, 18 How. 165. An injunction will not be granted for an alleged infringement of the right of a person claiming to have a copyright, in a case where the Acts of Congress have not been complied with. *Ewer v. Coxe*, 4 W. C. C. R. 487. The degree of protection to which compilations and abridgments are entitled, is discussed in *Gray v. Russell*, 1 Story, 11; *Folsom v. Marsh*, 2 Id. 100; *Webb v. Powers*, 2 W. & M. 497; *Story's Ex'rs v. Holcomb*, 4 McLean, 306. In *Folsom v. Marsh*, it was held by Judge Story, that unless there be a clear dedication of private letters by the author, either to the public or to some private person, the author has the property thereof, which passes to his representatives, and neither those to whom they were sent, nor any other persons, have a right to publish them on their own account, or for their own benefit, but may be restrained by injunction from so doing. But it was said, in *Hoyt v. Mackenzie*, 3 Barb. Ch. R. 320, that a court of equity has no jurisdiction to restrain the publication of private letters, although published with the view of wounding the feelings of individuals, or of gratifying a perverted public taste, when the letters are of no value to the author as literary property; and that they cannot be considered of such value to the author when he would not willingly consent to have them published. In *Bartlette v. Crittenden*, 4 McLean, 300, it was held, that one who permits pupils to take copies of his manuscripts, for the purpose of instructing themselves and others, does not thereby abandon them to the public, and the publication of them will be restrained by injunction; and in a subsequent case between the same parties, (5 McLean, 32,) it was held, that an author has a common law right of property in his manuscripts, but that publication of the work is a dedication of it to the public, which extinguishes the common law claim of an exclusive right to re-publish; also, that private letters are protected by section 9 of the Copyright Act of 1831. *Woolsey v. Judd*, 4 Duer, 379, asserts the exclusive right of the author of a letter, or his representatives, to restrain its publication, whatever its character may be; and holds that it cannot be published by the receiver without the consent of the writer, except where it is necessary for him to vindicate his own rights or character. Piracy of a copyright consists either in substantially copying the original work, or in imitating it so as to be a mere evasion of the copyright. *Emerson v. Davies*, 3 Story, 768. As to whether the jurisdiction of contracts concerning copyrights is, under a given state of circumstances, at law or in equity, see *Pierpont v. Fowle*, 2 W. & M. 23. The sort of novelty requisite to sustain a copyright for a musical composition, was discussed in *Jollie v. Jaques*, 1 Blatchford, C. C. R. 618. *Binns v. Woodruff*, 4 W. C. C. R. 48, was a case in which the bill was dismissed for want of novelty in a copyright for an historical print. A translation of a romance into the German language has been held not to be an infringement of the author's copyright. *Stowe v. Thomas*, 2 Wallace, Jr. 547. It seems that a price current is not protected by the copyright laws; *Clayton v. Stone*, 2 Paine, C. C. R. 382. In *Blunt v. Patten*, 2 Id. 393, the manner in which the copyright of a chart may be infringed, was considered. An account of profits, (though not embracing penalties,) as incidental to the relief by injunction, will not be decreed, unless prayed for in the bill. *Stevens v. Cady*, 2 Curtis, C. C. 200. The legislation of the United States on copyrights will be found in several acts of Congress, dated, respectively, May 31, 1790; April 29, 1802; February 15, 1829; February 3, 1831; June 30, 1834; and August 29, 1842. Under the Act of February 15, 1829, the Circuit Court of the United States has original jurisdiction at law and equity of all actions, suits, and controversies arising under these laws, irrespective of the citizenship of the parties, or the amount in controversy.

Psalms and Hymns, 5th edition," including the names of the tunes adapted to most of the hymns, and which, together with a table to find the hymns, a general table of contents, a table of scripture, an index of the subjects, called "contents," and also an explanation of the matters in plaintiff's said book, were bound or sewed up in one volume, and plaintiff's name appeared in the title-page as the author thereof. And that plaintiff with great care, application and attention selected a great number of such hymns from different authors, most of which he altered and amended in various respects before he inserted the same in his said book, and others of the said hymns which were included in plaintiff's said book were from original manuscripts, and had never before appeared in print, and were given to plaintiff for publication by sundry ministers and other persons of plaintiff's friends and acquaintance who were the authors thereof, and others of such hymns were written and composed by plaintiff himself, and all of such hymns were arranged by plaintiff in his said book in a regular order and method entirely new, so as to be in plaintiff's opinion useful, and adapted to the assistance and furtherance of Divine Worship in public congregations, as well as for the use of private families and individuals; and that the selecting, amending, writing, composing, and arranging of which hymns over and above plaintiff's great pains, labor, and attention therein, engaged and took up great part of plaintiff's time at intervals for several years.

That plaintiff having great reason to expect that such work would have a rapid and extensive sale, plaintiff with a view to secure to himself the sole and exclusive right of printing, publishing, and \*selling the same, did on or about the 24th day of August — cause the said Selection of Hymns to be duly entered in the register-book of the Stationers' Company in plaintiff's name, as the sole proprietor thereof, according to the directions of the act of parliament passed in the 8th year of Queen Anne, intituled "An act for the encouragement of learning, by vesting copies of printed books in the authors or purchasers of such copies, during the time therein mentioned."

[ \*117 ]

The book entered at Stationers' Hall.

That the said Selection of Hymns hath passed into the 6th edition which is an edition improved and enlarged, and that plaintiff never did transfer, assign, or dispose of his right or interest in the said Selection of Hymns, or the copy or copyright thereof to any person whomsoever, nor ever consented that the same should be printed, reprinted, or published by or for any person whomsoever, but plaintiff hath the sole and exclusive right to print, publish, and sell the same for his own private benefit and advantage, and plaintiff hath actually sold or caused the same to be sold at the most reasonable price that the nature and execution of the work would admit of (that is to say): [*stating the prices.*] And plaintiff was in hopes he should have continued to have printed, published and sold the said book, and enjoyed the sole benefit, profit, and advantage arising therefrom, without his right thereto being infringed upon or having any molestation or hindrance therein by any person whomsoever. And that plaintiff should have enjoyed the sole benefit and right to the same without any encroachment therein, as in justice and equity

A 6th edition published.

Publication of the work by the defendant in a manner resembling the plaintiff's.

Copies of the pirated edition printed on two sorts of paper, and sold at a lower rate than plaintiff's.

Pretence that the book published by the defendant is a different work.

[ \*118 ]

Charge as to the points of resemblance between the two works.

Charge as to the number of hymns contained in the work.

ought to have been the case. BUT NOW SO IT IS, &c. [*proceeding as in form IV. p. 5, as far as the word "premises,"*] the said defendant contriving how to deprive plaintiff of the gains and profits which he was and is entitled to have and receive from the sole and exclusive printing, publishing and vending the said Selection of Hymns, he the said defendant since plaintiff printed and published the 6th edition thereof, hath also printed or caused to be printed and published and sold, a certain book or Selection of Hymns of nearly the same size, and bound or sewed up in a manner resembling that published by plaintiff, and comprising all the hymns and tables in the Selection of Hymns so printed and published by plaintiff.

That the said defendant hath, the more effectually to increase the sale of his pirated edition of the said book, and to prevent the sale of plaintiff's genuine edition of the said book, printed or caused to be printed copies of his said pirated edition upon two different sorts of paper which the said defendant hath sold at a lower price than plaintiff's were or are sold, whereby the sale of plaintiff's said book or Selection of Hymns has been for a considerable time last past, and now is greatly lessened and hindered, to the great injury and prejudice of plaintiff. And the said defendant to give color to such unfair and unjust proceedings sometimes pretends that the said book or \*Selection of Hymns so printed, published and sold by him, is not the same book or Selection of Hymns printed, published, and sold by plaintiff, and to which plaintiff is entitled as aforesaid, but another and different work. Whereas plaintiff charges that the said book or Selection of Hymns so printed, published, and sold by the said defendant, hath a title-page prefixed thereto, printed in such a manner as to resemble the title-page to plaintiff's said book, and is very little different from plaintiff's title-page, and in particular plaintiff's name appears in the title-page of such pirated edition in the same manner as in the title-page of plaintiff's own work as being the author thereof, but on the back of plaintiff's title-page it appears to be entered at Stationers' Hall, and underneath is a N. B. showing how the number of the Hymns answers to the number of the pages, and in the said pirated edition there is a N. B. on the back of the title-page resembling the N. B. on the back of the title-page of plaintiff's, save as to the number of the hymns and pages, but such pirated edition is not expressed to be entered at Stationers' Hall, and the table to find any hymn by the first line, together with the table of the general contents immediately following the preface, comprising sixteen pages, a table of scriptures, and index of the subjects, called "contents," and also an explanation of the matters in plaintiff's said book, comprising altogether twenty-six pages, being all of plaintiff's own composition, are exactly transcribed, copied, and entered in the said defendant's pirated edition. And the said defendant in the preface to his pirated edition makes use of the following words (viz.) "The whole of Dr. R.'s excellent selection is incorporated in this volume." And plaintiff further charges that plaintiff's said Selection of Hymns contains five hundred and eighty-eight hymns comprised in nearly twenty sheets of letter press, and all of such five hundred and eighty-eight hymns are also exactly copied

or comprised in the like number of sheets of the said pirated edition, and are numbered and arranged with the names of the authors to each hymn, exactly in the same order and method as in plaintiff's said book; and the only variances which plaintiff hath discovered between such pirated edition and his said book in the said twenty sheets of letter press are, by the omission of three lines in a note at the bottom of the three hundred and fifty-fifth hymn in the said pirated edition, which lines are contained in the note at the foot of the three hundred and fifty-fifth hymn of plaintiff's book, and also by the omission of a note which refers to the four hundred and forty-second hymn of the said pirated edition, and which is inserted in and refers to the four hundred and forty-second hymn of plaintiff's book, or if there are any other variations between the said two books in such last-mentioned number of sheets the same are very insignificant, and merely a few words purposely omitted or inserted by the said defendant, the better to cover his design and shelter himself from the consequence of having pirated plaintiff's said book. And the said defendant hath with the like view at the latter part of his pirated edition introduced eleven additional hymns therein, stated as being from original manuscripts, and which plaintiff admits are not included in his said Selection of Hymns, but then the said defendant sometimes gives out and pretends that such pirated edition of plaintiff's said Selection of Hymns was not nor is printed or published or sold by him or for his use or benefit or by his directions. Whereas plaintiff charges that the said defendant hath either printed \*and published, or caused such pirated edition to be printed and published at his own expense, in order to sell and dispose of the same at an under-rate for his own benefit, and thereby deprive plaintiff of the sole benefit and advantage of his copyright in the said book; and as evidence thereof plaintiff charges that the said defendant hath printed and delivered out to the public a list entitled "New Books and pamphlets, printed for and sold by B. C. No. —, — street," comprising a list of seventy-six different books or articles, among which the twenty-fifth article is in the words and figures following (that is to say): "R.'s Selection of Hymns from the best authors, intended as an appendix to Dr. Watts' Psalms and Hymns, 6th edition," with the names of the tunes adapted to most of the hymns, price 3s. or on finer paper 3s. 6d. and by which said article plaintiff charges that the said defendant intended to publish or offer to sale his said pirated edition of plaintiff's said book or Selection of Hymns.

That a copy of such pirated edition of the said work hath been purchased by plaintiff's orders at the shop of the said defendant at —, aforesaid, and the said defendant hath as plaintiff charges sold or disposed of many thousands or a great number of copies of such pirated edition to different booksellers in foreign parts as well as in Great Britain to sell for his own benefit and advantage.

That the said defendant hath sold many thousands or a great number of copies of such pirated edition in a retail way at his aforesaid shop for his own benefit and advantage, and he threatens that he will continue to print, publish, and sell such pirated edition, or

Pretence that the pirated edition is not printed, published, or sold by the defendant.

[ \*119 ] Charge the contrary. Evidence in support thereof.

A copy of the pirated edition purchased at defendant's shop.

Many copies sold by the defendant wholesale and retail.

Applications to the defendant to desist and account. cause the same to be printed, published, and sold for his own benefit and advantage as he shall think proper; and notwithstanding plaintiff hath frequently by himself and agents requested the said defendant to desist from such proceedings and to account with plaintiff for the profits which have been received by him from the sale of such pirated edition he refuses so to do. All which actings, &c. [*see form VI. p. 5, interrogating to the stating and charging parts.*]

Prayer. And that the said defendant may be decreed to account for and pay to plaintiff all such gains and profits as have accrued or arisen or been got in and received by him, or which may be got in by the said defendant, or by any persons in trust for him or for his use by the printing, publishing, and sale of the said pirated edition; and that the said defendant may be restrained by the injunction of this honorable court from printing, publishing, and selling, or causing or being in any way concerned in the printing, publishing, or selling, or exposing to sale, or otherwise disposing of any copies of the said pirated edition of plaintiff's book, or any other book purporting to be or resembling the book so printed, published, and sold by or for plaintiff (other than and except plaintiff's own selection printed and published by plaintiff's order, and for plaintiff's use and benefit.) And that plaintiff may have his costs of the suit, and may have such further or other relief in the premises as to your lordship may seem meet, and the nature and circumstances of the case may require. May it please, &c. [*see forms No. 1, and 4, p. 6.*]

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[ \*120 ] \*XXXVIII. *Charges in a bill to restrain the defendant from selling a pirated edition of a book.*

That the defendants have printed and imported many copies. And your orators further charge that the said defendants or some or one of them have or hath printed, and also imported or caused to be printed and imported, without the consent of your orator, many copies of the said work and also of some part or parts thereof, great numbers of which copies they have published, exposed to sale, and sold, and that they threaten and intend to continue to publish, expose to sale, and sell others of such copies. And your orators further charge that the said defendants are considerable dealers in books, and that they or some or one of them keep or cause to be kept some book or books of account or accounts in which they or some or one of them usually enter or cause to be entered the articles which they sell or dispose of in the way of their trade; and in particular your orators charge that the said defendants or some or one of them have or hath made or caused to be made some entry or entries in some book or books of the number of copies which have been sold or disposed of by them or some or one of them or upon their or some or one of their accounts; and that the said defendants or some or one of them, or some other person or persons for the use or with the privity of them or some or one of them, now have or hath or lately had the said books accounts and entry or entries or

That they have kept accounts of the number of copies sold.



some of them or some copy or copies of them or some of them in their or his custody possession or power, or the said defendants or some or one of them or some other person or persons by the order or with the privity of them or some or one of them have or hath lately destroyed the said books accounts and entry or entries. And your orators further charge that the said defendants know or suspect, or have some reason to know believe or suspect, what number of copies they caused to be thrown off and printed, and they or one of them or some other person or persons for their use or with the privity of them or some or one of them, now have or hath in their or his possession custody or power, or lately had, some receipt or receipts account or accounts entry or entries writing or writings relating to the printing of the said copies, and to the number of the same which was thrown off and printed; and the said defendants or some or one of them well knew or knows or are or is able to set forth how many copies now remain undisposed of.

That they know what number of copies were printed, and have entries relating thereto;

and how many copies remain unsold.

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\*XXXIX. *Bill to restrain the defendants from printing and publishing the trial of Lord Viscount Melville, the exclusive right having been given to plaintiffs by the Chancellor, under an order of the House of Lords;—Praying also for an account of the profits made by the sale of the work.*(2) *The opinion of the then Solicitor-General is added at the conclusion, p. 123.*

[ \*121 ]

States that H. L. V. M. was in the month of — now last past, tried in the High Court of Parliament on articles of impeachment for high crimes and misdemeanors exhibited against him by the knights, citizens, and burgesses in Parliament assembled, in the names of themselves and of all the commons of Great Britain and Ireland.

That by an order made by the lords spiritual and temporal in parliament assembled on the — day of —, it was ordered that your lordship should give orders for the printing and publishing the said trial, and in addition thereto, the several questions put to the judges on Tuesday — and Friday — of the said month of — and their answers thereto, and that no other person should presume to print the same. As by the journals of the house will appear.

That in pursuance of the said order your lordship was pleased to appoint plaintiffs to print and publish the whole proceedings in said house upon said impeachment, and to forbid any other person to print or publish the same. As by such appointment in the custody of plaintiffs will appear.

That under the authority and by virtue of said appointment, plain-

(2) In this case, reported in 13 Ves. 493, 2d edit. *Gurney v. Longman*, Lord Erskine, L. C. upon the authority of *Bathurst v. Kearsley*, in Easter Term, 1756, granted the injunction until the hearing, expressly declaring that he considered the question as open in any future stage. A demurrer was afterwards put in, but a compromise took place; 13 Ves. 509.

tiffs, who had been employed by the direction of the said House of Peers to take down the said trial in short-hand, have at a very considerable expense to themselves been preparing to print and publish the said trial and other proceedings on the said impeachment, and the same are in great forwardness and nearly ready for publication. And plaintiffs well hoped to have had the full benefit of the said appointment and of publishing the said trial in pursuance thereof, and that no person would have interfered in publishing or printing the said trial or the proceedings thereon or any part thereof. BUT NOW SO IT IS, &c.

[ \*122 ]

*Charge* that defendant J. C. hath printed or caused to be printed, and said defendants T. N. L. &c. have published and sold, or caused to be published and sold, a book or volume purporting to contain the said trial and proceeding thereon, and they the said defendants have respectively so printed and published, or caused to be printed and published the same trial, and advertised the same for sale under the title and in the words and figures following, that is to say, "The trial by impeachment of Henry Lord Viscount M. for high crimes and \*misdemeanors before the House of Peers in Westminster Hall between the — and —, to which is prefixed a sketch of the life and political character of his lordship and complete account of the proceedings in Parliament relative to the charges on which the impeachment was founded." And in such advertisement it is expressed that the said trial, book or work, is sold by them the said last-named defendants at the price of 10s. 6d. each in boards or to that effect. And the said last-named defendants respectively have or hath sold, or caused to be sold, a great number of copies to the amount of several thousand copies of the said trial and proceedings so published and advertised by them respectively as aforesaid, and have or hath many hundred copies more of the same printed book ready for sale, and they the said last-named defendants are still continuing to sell the same, and they have received considerable sums and have made and still do make considerable profit by the sale of such book; and to countenance such proceedings

*Pretend* that such book so printed and published, and advertised for sale and sold, does not contain any part of the said trial of the said Henry Lord Viscount M. in the said high court of Parliament or of the proceedings on the said impeachment, or that such part, if any, is inconsiderable, or that said publication contains other matter which is their property.

*Charge* that the said publication, book or work, contains the speeches and evidence or great part of the speeches and evidence delivered and given upon the said trial and the defence of said Henry Lord Viscount M. by his counsel, and other parts of the proceedings on the said trial, and that the rest of the said publication is very inconsiderable, and so the said defendants well know, but contend they have respectively desisted from publishing and selling the said book, the contrary whereof plaintiffs charge to be the truth.

*Charge* that although defendants T. N. L. &c. have as they have alleged discontinued the sale of the said work at their own shop or warehouse, yet the same is now selling at the shops or warehouses

near to or adjoining the shop or warehouses of them the said last-named defendants and at divers other places.

*Charge* that the said publication is now selling and sold by the directions and on the account and for the benefit of the said last-named defendants, and the said defendant J. C. threatens and intends to print, and the said other defendants threaten and intend to continue to publish and sell the said trial, book or work for their own benefit, and refuse to account with plaintiffs for the profits which they have already made for the publication and sale thereof. All which actings, &c. [see form VI. p. 5, *interrogating to the stating and charging parts.*] And that they may set forth a full true and particular account of all the numbers parcels or copies of the said book or publication which they or either of them or any person by their or either of their order or for their or either of their use or benefit have or hath sold or disposed of, or caused to be sold or disposed of, and when and by whom and to whom and for what sums of money the same respectively were sold and disposed of; and also a full true and particular account of all the profits which they and each \*of them respectively or any person or persons by their or either of their order or for their or either of their use have or hath made by means of said sale and publication; and that the said defendant J. C. may set forth how many or what number of copies of the said book, work or publication he hath printed or caused to be printed.

Interrogatory for a discovery as to the numbers of copies sold, and the profits produced thereby.

[ \*123 ]

And that all the said defendants may be respectively restrained by the order and injunction of this honorable court from the further printing, publishing, selling, or exposing to sale, by themselves or their agents or servants, the said book, work or publication, or so much thereof as concerns or relates to the said trial of the said Henry Lord Viscount M. and the proceedings thereon, or any other book work or publication containing the same, or any part of the said trial or the proceedings thereon; and that the said defendants T. N. L. T. H. C. O. and O. R. may be decreed to come to a just and fair account with plaintiffs for the produce and profits of the said book, work or publication, and to pay to plaintiffs what shall be found coming to them on the taking of such account, after making to them the said last-named defendants all just allowances. [*And for further relief, see form VIII. p. 5.*] May it please, &c. [*see forms No. 1, and 4, p. 6.*]

J. J.

The defendants submitted a case for the opinion of the Solicitor-General, whether the Lord Chancellor by order of the House of Lords had the power of granting the exclusive right of publication, and whether an injunction could be obtained, or an action brought against defendants for such publication; upon which case the Solicitor-General gave the following opinion:

"I am of opinion that by law Messrs. G. have not the exclusive privilege to publish the trial of Lord M. and that they could not by filing a bill in equity obtain an injunction to restrain any person from publishing the trial, or maintain an action against any person who published it; but the House of Lords having made an order

that no person shall presume to publish the trial but under the orders of the Lord Chancellor, I apprehend that the House would, upon a complaint being made to them, consider any person who printed it except Messrs. G. as guilty of a breach of privilege, and would probably commit such person to prison for that offence. The legality of such a commitment might be questioned by the party suing out a writ of *habeas corpus*; I cannot say with confidence what would be the result of such a proceeding, but the strong inclination of my opinion is, that the order of the House of Lords could not legally be enforced, and that a commitment founded upon it could not be supported."

S. R.

[ \*124 ]

\*8. BILLS BY CREDITORS FOR PAYMENT OF DEBTS.

\*XL. *Bill by simple contract creditors against the executrix and executor of the deceased debtor, whose estate is alleged to be insolvent;—Prayer for an account of the testator's personal estate, debts, &c. and to have the personal estate duly administered;—Praying also for a receiver and an injunction(1) to restrain the defendant from getting in any outstanding personal estate.*

*With variations, enclosed within brackets [ ], adapted to the case, of a trader, who has died intestate possessed of real estate.(2)°*

In Chancery.

To, &c.

Humbly complaining show unto your lordship your orators H. P. of, &c. gent. and E. S. of, &c. merchant, for and on behalf of them—

(1) It seems advisable as a general rule, always to insert the prayer for a receiver and injunction in bills by creditors for payment of debts, as it can be acted upon or not as may be thought proper, and will prevent the necessity of amending the bill to obtain those objects should circumstances arise to make it expedient.

(2) By stat. 47 Geo. 3, s. 2, c. 74, it is enacted that a trader dying seised of or entitled to any estate or interest in lands, tenements, hereditaments, or other real estate which before the passing of the act would have been assets for the payment of his debts due on any specialty in which the heirs were bound, the same should be assets to be administered in courts of equity, for the payment of all the just debts of such person as well debts due on simple contract as on specialty; but all creditors by specialty in which the heirs are bound are to be first paid the full amount of the debts due to them, before any of the creditors by simple contract, or by specialty in which the heirs are not bound, shall be paid any part of their demands.

This statute applies only to persons who were *traders at the time of their decease*, and not to persons who have *bonâ fide* quitted trade before they died; *Hitchon v. Bennet*, 4 Madd. 182; Toll. Ex. 6th edit. p. 416.

° If a fund is accessible only in chancery, that court may be applied to in the first instance. *Russel v. Clark*, 7 Cranch, 69; *O'Brien v. Coulter*, 2 Blackf. 421. Property fraudulently withdrawn beyond legal process, may be reached in equity. *Tappan v. Evans*, 11 N. H. 311; *Gordon v. Sewell*, 21 Maine, 251; see also, *Bigelow v. Congregational Society of Middletown*, 11 Verm. 283; *Waterman v. Cochran*, 12 Id. 699;

selves and all other the creditors of J. K. late of, &c. deceased, who shall come in and contribute to the expense of this suit, That the

*Williams v. Hubbard*, Walk. Ch. 28; *Holden v. Shader*, 20 Johns. R. 554. The return of an execution unsatisfied, is generally sufficient to authorize the filing of a creditor's bill. *Stoors v. Kelsey*, 2 Paige, C. Rep. 418. Where the creditor seeks the aid of chancery against personality, he must show that he has taken out execution, and pursued it to its full extent; but as to realty, a judgment is sufficient. *Brinkerhoff v. Brown*, 4 Johns. C. R. 671; *Williams v. Brown*, Ib. 682. The bill must set forth the issuing and return of the execution; *Cassiday v. Meacham*, 3 Paige, C. R. 311; *Merchants and Mechanics Bank v. Griffith*, 10 Id. 519; *Reed v. Wheaton*, 7 Id. 663; *Smith v. Fitch*, 1 Clark, 265; *Hope v. Brinkerhoff*, 3 Edw. Ch. 445; and it will not lie if it appears from the bill itself that the remedy at law is not exhausted. *Starr v. Rathbone*, 1 Barb. 70. As to the necessity of a prior judgment and execution, see *Duberry v. Clifton*, Cooke, 328; *Morgan v. Crabb*, 3 Porter, 470; *Wright v. Petrie*, 1 S. & M. Ch. 282; *Scott v. Wallace*, 4 J. J. Marsh. 654; *Dana v. Banks*, 6 Id. 219; *Woolley v. Stone*, 7 Id. 302; *Beck v. Burdett*, 1 Paige, C. R. 305; *McElwain v. Willis*, 9 Wend. 548; *Screven v. Bostick*, 2 McCord, Ch. 410; *Clark v. Banner*, 1 Dev. & Bat. Ch. 608; *McDermot v. Blois*, Charl. R. M. 281; *Parish v. Lewis*, 1 Freem. Ch. 299; *West v. McCarty*, 4 Blackf. 244; *Kelso v. Blackburn*, 3 Leigh, 299; *Rice v. Barnard*, 20 Vt. 479; *Jshmael v. Parker*, 13 Ill. 324; *North American Fire Insurance Company v. Graham*, 5 Sandf. 197; *Barrow v. Bailey*, 5 Florida, 9. But it has been held, that a judgment against the executor at law, is no evidence on such a bill against the heirs and devisees. *Darrington v. Borland*, 3 Porter, 9; see also, *Garnett v. Macon*, 6 Cal. 308. The assignee of a judgment must issue an execution after the assignment, before he can file a creditor's bill. *Fitch v. Baldwin*, 1 Clark, 106; *Wakeman v. Russell*, 1 Edw. Ch. 509; see however, *Gleason v. Gage*, 7 Paige, C. R. 121; *Strange v. Longley*, 3 Barb. Ch. R. 650. But it is said this rule does not apply to a case where the debtor is absent from the county, so that no judgment can be had against him. *Scott v. McMillin*, 1 Litt. 302. And if the bill is filed an unreasonable length of time after the execution has been returned, a new execution must be issued. *Storms v. Ruggles*, 1 Clark, 148. The bill will not be sustained while the creditor has the body of the debtor in execution. *Tappan v. Evans*, 11 N. H. R. 311; *Stilwell v. Van Epps*, 1 Paige, C. R. 615. Judgment creditors, who have exhausted their remedies at law, may unite in a bill to set aside a fraudulent assignment by their debtor. *Lentilhon v. Moffat*, 1 Edw. Ch. 451; *Bailey v. Burton*, 8 Wend. 339; *Dugan v. Vattier*, 3 Blackf. 245. But as to property, on which no creditor has obtained a lien by judgment and execution, a creditor who has exhausted his legal remedy may file a bill for his own benefit only, without making other creditors, standing in the same situation, parties. *Wakeman v. Grover*, 4 Paige, C. R. 23. Other creditors may come in after the bill has been filed; *The Bank v. Dugan*, 2 Bland. 254; and the court should call in all the creditors of the estate, to receive dividends. *Kinney v. Harvey*, 2 Leigh, 70; *Williamson v. Wilson*, 1 Bland. 418; see *Brooks v. Gibbons*, 4 Paige, C. R. 374; *Parmlee v. Egan*, 7 Paige, C. R. 610; *Birley v. Staley*, 5 Gill & J. 432; *Shubrick v. Shubrick*, 1 McCord, Ch. 406. The nature of the equitable assets which may be reached by a creditor's bill, is discussed and determined in *Craig v. Hone*, 2 Edw. Ch. 554; *Weed v. Pierce*, 9 Cow. 722; *Congden v. Lee*, 3 Edw. Ch. 304; *Thompson v. Nixon*, Ib. 457; *Brewster v. Power*, 10 Paige, C. R. 562; *Benson v. Le Roy*, 4 Johns. C. R. 651; *Cohen v. Carroll*, 5 S. & M. 545; *Wagoner v. Speck*, 3 Ham. 294; *Plutt v. Judson*, 3 Blackf. 235; *Demaree v. Driskell*, Ib. 115.

A creditor's bill need not allege a fraud on the part of the defendant, or the concealment by him of property or effects, with the intention to delay or hinder the complainant or other creditors. *Brown v. Bates*, 10 Ala. 432.

Where the bill stated that the judgment on which it was founded was "still due and owing, above all prior just claim by the defendant," it was held, that the insertion of the word "prior" was bad. *Van Cleef v. Sickles*, 2 Edw. Ch. 392. Where the bill prays that the debtor's property may be sold for the benefit of creditors, no other allegation that the complainants proceed on behalf of themselves and other creditors, is necessary. *Birely v. Staley*, 5 Gill & J. 432; see also, *Gibson v. McCormick*, 10 Id. 65. A supplemental bill is proper to reach property acquired subsequently to the original bill, and applicable to the payment of the same debt. *Eager v. Price*, 2 Paige, C. R. 333. A statement that the assignment of a judgment was by deed, imports sufficient consideration to sustain the assignment. *Gleason v. Gage*, 7 Paige, C. R. 121. By the institution of a judgment-creditor's suit, the plaintiff obtains a lien on all the choses in action of the defendant. *Roberts v. Albany and West Stockbridge Railroad Company*, 25 Barb. 662.

Statement of  
the debts due  
to the plain-  
tiffs,

and of debts  
due to other  
persons.

[ \*125 ]  
Death of  
debtor.  
His will.

That his wi-  
dow and exe-  
cutrix, before  
probate, pos-  
sessed herself  
of part of his

said J. K. deceased was in his life-time and at the time of his decease [a trader within the meaning of the bankrupt laws and was] indebted to your orator H. P. in the sum of £—— for and on account of his bill of costs for various matters and business transacted for him the said J. K. deceased, by your orator H. P. as his attorney or solicitor, and which said sum of £—— still remains due and owing to your orator H. P. And that the said J. K. also in his life-time, and at the time of his decease, stood indebted to your orator E. S. in the sum of £—— for various goods and merchandize supplied by your orator E. S. to the said J. K. deceased, and which said last-mentioned debt or sum of £—— also still remains due and owing to your orator E. S. And your orators further show unto your lordship that the said J. K. was also at the time of his decease (as it is alleged) indebted to certain other persons by specialty and on simple contract. And that the said J. K. being so indebted and being \*possessed of or well entitled unto considerable [real and] personal estate, departed this life on or about the —— day of ——, (3) having first duly made and published his last will and testament in writing, bearing date the 28th day of April ——, and thereby gave and bequeathed all his estate and effects in the words and manner following (that is to say): “I give and bequeath unto my dear wife all my estate, property and effects whatsoever and wheresoever absolutely. And I appoint my said wife and my brother-in-law R. T. esq. executrix and executor of this my will, and I revoke all other wills by me heretofore made.” And your orators further show unto your lordship that the said testator departed this life without having revoked or altered his said will, and that immediately after his decease his wife R. E. K. (the executrix of the said testator and one of the defendants hereinafter named) possessed herself of a considerable part of his personal estate and effects, and converted the same to her own use and entered into possession of his real estates and receipt of the rents and profits thereof. And that afterwards,

(3) In the case of a debtor deceased intestate possessed of real estate, omit the parts relating to the will as far as the asterisk \*, and proceed thus:

[intestate, leaving A. B. of ——, a defendant hereinafter named, his heir at law and C. D. his widow, also a defendant hereinafter named, him surviving, and that shortly after his decease the said C. D. obtained letters of administration of his goods, chattels, rights and credits to be granted to her by the proper Ecclesiastical Court, and thereby became and now is his legal personal representative. And your orators further show that the said C. D. as such administratrix possessed herself of all the personal estate and effects of the said intestate to a very large amount, and much more than sufficient to pay and satisfy all his just debts and funeral expenses.]

In equity the personal estate of a decedent is the natural fund for the payment of debts and legacies, and, generally speaking, is first to be exhausted, before resort can be had to the real property. *Wyse v. Smith*, 4 Gill & J. 296. The order in which an estate is to be applied to the payment of debts is, 1. The personal estate, unless expressly or by plain implication exempted. 2. Estates devised expressly for the payment of debts. 3. Estates descended. 4. Estates specifically devised, though charged generally with the payment of debts. *Livingston v. Newkirk*, 3 Johns. C. R. 312. A sale of the real estate will not be decreed until the amount of the debts and the deficiency of the personal estate is ascertained; *Thompson v. Brown*, 4 Johns. C. R. 619; for the real estate is only to be resorted to as an auxiliary fund after the personalty has been exhausted. *Stevens v. Gregg*, 10 Gill & J. 143. If the creditors may collect their demand from the administrators, equity will not entertain jurisdiction. *Pease v. Scranton*, 11 Geo. 33.

namely, on or about the 3d day of April last past, the said R. T. the executor named in the said testator's will and also a defendant hereinafter named, duly proved the said will in the Prerogative Court of the Archbishop of Canterbury, and took upon himself the burthen of the execution thereof, and possessed himself of the residue of the estate and effects of the said testator to a very considerable amount and value, and together with the effects of the said testator possessed by his said widow the said E. K. as aforesaid, much more than sufficient to discharge and satisfy all his just debts, funeral and testamentary expenses, \* but that the said defendants E. K. and R. T. have not yet paid or satisfied the respective debts due to your orators or either of them or any part thereof respectively, and the same, together as it is alleged with some other of the debts owing by the said J. K. at the time of his decease, still remain unsatisfied. And the said defendants E. K. and R. T. having as aforesaid possessed assets of the said J. K. much more than sufficient to satisfy all his said debts, your orators have applied to and requested the said defendants to satisfy the same accordingly. And your orators well hoped that the said defendants would have complied with such requests, as in justice and equity they ought to have done. BUT NOW SO IT IS may it please your lordship that the said defendants E. K. and R. T. combining and confederating with [*the said A. B. the heir at law and with*] divers other persons, &c. (*see form IV. p. 5.*) the said defendants E. K. and R. T. \*refuse to pay the said debts, or any of them, and allege that the personal estate and effects of which the said J. K. deceased was possessed of or entitled to at the time of his decease and which have come to the hands of them respectively, or either of them, or to the hands of any person or persons by their or either of their order, or for their or either of their use will not be sufficient to answer and satisfy his debts by specialty, but the said defendants further allege that they are ready and willing to account for the personal estate and effects of the said J. K. [*and his real estate and the rents and profits thereof*] possessed or received by them, or either of them, or for their or either of their use, and to pay and apply such personal estate and effects [*and real estate*] or the produce thereof so far as the same will extend, to and amongst his creditors according to their respective priorities, but that by reason of the great number of outstanding debts owing by the said J. K. and the insolvency of his estate, they cannot safely do so without the direction and decree of this honorable court. [*But the said A. B. gives out and pretends that the said J. K. was not a trader at the time of his decease within the meaning of the bankrupt laws, and that he as the heir at law of the said J. K. is entitled to the whole of his real estate. Whereas your orators charge that the said J. K. was at the time of his death a trader within the meaning of the bankrupt laws, and that the whole of his real estates is applicable in payment of his debts in case his personal estate and effects are insufficient for that purpose.*] TO THE END therefore that, &c. (*see form VI. p. 5, interrogating to the stating and charging parts.*) And that an account may be taken by and under the direction and decree of this honorable court of the [*real and*]

personal estate, and converted the same to her own use, and received the rents of the real estate.

Probate by the executor who possessed himself of the residue of the personal estate.

Plaintiff's debts still due.

Application to the defendants.

[ \*126 ]

Defendants refuse to pay the deceased's debts, and allege that his estate is insolvent, but that they are willing to account and administer his estate under the decree of the court.

[*Pretence by the heir at law that the deceased was not a trader, and that he as heir is entitled to the real estate.*]

Prayer.

personal estate of the said J. K. deceased, and of the said debts due to your orators respectively, and of the debts due to the other creditors of the said J. K. remaining unsatisfied at the time of his decease, [*and of the rents and profits of his real estate which have been possessed by or come to the hands of the said defendants, or either of them, or of any person or persons by their or either of their order, or for their or either of their use.*] And that the [*real and*] personal estate of the said J. K. or so much thereof as remains unapplied and undisposed of may be applied in the first place in or towards satisfaction of his funeral expenses in case the same have not been satisfied, and then of such of his debts due to his creditors by specialty who shall come in and contribute to the expense of this suit, and after payment and satisfaction of such specialty debts, then in satisfaction of the said debts due to your orators, and the other simple-contract creditors who shall come in in like manner and contribute to the expense of this suit, equally share and share alike in a due course of administration. And (if necessary) that a receiver may be appointed by this honorable court to collect in and receive the outstanding personal estate and effects belonging to the said J. K. [*and the rents and profits of his real estate.*] And that the said defendants may be restrained by the injunction of this honorable court from [*receiving the rents and profits of his real estate and from*] collecting in and receiving any such outstanding personal estate, and from assigning, selling, or parting with any part of the personal estate and effects of or belonging to the said J. K. now in the custody or power of the said

[ \*127 ]

\*defendants or either of them, or in the custody, possession or power of any person or persons in trust for or for the use of them or either of them. And that your orators may have such further and other relief in the premises as to your lordship shall seem meet and this case may require. May it please, &c. (*see form No. 1, and 4, p. 6.*)

*Pray subpoena and injunction  
against E. K. and R. T.*

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*XLI. Bill by simple contract creditors against the executors of the deceased debtor, for payment of his debts.*

Humbly complaining show unto your lordship your orator W. B. of, &c. and C. D. of, &c. creditors by simple contract of J. F. late of, &c. deceased, on behalf of themselves and all other the creditors of the said J. F. who shall come in and seek relief by and contribute to the expense of this suit, that the said J. F. at the time of his death was justly and truly indebted unto your orator W. B. in the sum of £—— and upwards for goods sold and delivered, and moneys paid laid out and expended to and for his use, and that the said J. F. was also justly and truly indebted to your orator C. D. in the sum of £—— and upwards for, &c. And your orators further show unto your lordship that the said J. F. in his life-time, and at the

Statement of  
the debts due  
to the plain-  
tiffs.



time of his death was possessed of or well entitled unto a considerable personal estate, and being so possessed departed this life on or about — having first duly made his last will, bearing date &c. and thereby appointed J. M. and C. S. (the defendants hereinafter named) the executors thereof, as in and by the said will or the probate thereof, to which your orators crave leave to refer when produced to this honorable court will appear. And your orators further show unto your lordship that the said J. M. and J. S. duly proved the said will in the proper Ecclesiastical Court and undertook the executorship thereof, and possessed themselves of the personal estate and effects of the said testator to a very considerable amount, and more than sufficient to satisfy his just debts and funeral expenses. And your orators further show unto your lordship that the said J. M. and C. S. having possessed themselves of the said testator's personal estate and effects as aforesaid, your orators have made and caused to be made several applications to them the said J. M. and C. S. and requested them to pay and satisfy unto your orators their respective demands, with which just and reasonable requests your orators well hoped that the said J. M. and C. S. would have complied as in justice and equity they ought to have done. BUT NOW SO IT IS, &c. [see form IV. p. 5.] And the said defendants pretend that the said testator's personal estate was small \*and inconsiderable and hath already been exhausted in the payment of his funeral expenses and just debts. Whereas your orators charge that the said testator's personal estates and effects were more than sufficient to discharge all his just debts and funeral expenses, and so it would appear if the said defendants would set forth a full true and particular account of all and every the personal estate and effects of the said testator come to their or either of their hands or use, and also a full, true and particular account of the manner in which they have disposed of or applied the same, but which they refuse to do. All which actings, &c. [see form VI. p. 5, *interrogating to the stating and charging parts.*] And that an account may be taken of the moneys due to your orators in respect of their said several demands, and of other the debts owing by the said J. F. at the time of his death; and that if the said defendants shall not admit assets of the said testator, then that an account may also be taken of the personal estate and effects of the said testator possessed or received by or by the order or for the use of the said defendants, or either of them, and that such personal estate may be applied in a due course of administration. And that your orators and the said other unsatisfied creditors by simple contract of the said testator may have such further or other relief in the premises as to your lordship shall seem meet, and the circumstances of this case may require. May it please, &c. [see form No. 1, p. 6.]

*Pray subpoena against J. M.  
and C. S.*

Death of the  
testator.  
His will.

Probate by the  
executors.

Applications  
to the defend-  
ants.

Pretence that  
the personal  
estate is ex-  
hausted.

[ \*128 ]

Charge that  
it was more  
than sufficient  
to discharge  
all the debts,  
&c.

Prayer.

J. L.

*XLII. Bill by simple contract creditors against the deceased administratrix and heir at law ;—The administratrix alleging that the personal estate is insufficient, and has been applied in payment of specialty debts ;(4)—Prayer to have an account taken of the moneys due to the plaintiffs, of the intestate's personal estate possessed by the administratrix, and of the rents of the real estate received by the heir at law, and for payment of the plaintiff's demands out of the personal estate, if sufficient, but if insufficient, then praying that the specialty debts may be raised and paid out of the real estate, and that the simple contract creditors may have satisfaction out of the real estate so far as the personal estate may have been applied in payment of specialty debts.*

To, &c.

[ \*129 ] Humbly complaining show unto your lordship your orators A. B. of, &c. and C. D. of, &c. on behalf of themselves and all other the \*simple contract creditors of E. F. late of, &c. deceased who shall come in and contribute to the expense of this suit, That the said E. F. was in his life-time and at the time of his death justly and truly indebted unto your orator A. B. in the principal sum of £—— with an arrear of interest thereon upon and by virtue of his the said E. F.'s promissory note of hand in writing bearing date, &c. for securing the payment of the said sum of £—— to your orator A. B. with interest for the same at and after the rate of £—— per annum. As by the said promissory note, &c. And your orators further show that the said E. F. in his life-time and at the time of his death was also justly and truly indebted unto your orator C. D. in the sum of £—— and upwards for goods sold and delivered and moneys paid laid out and expended to and for his the said E. F.'s use. And your orators further show that the said E. F. was in his life-time and at the time of his death possessed of, interested in, and entitled unto a very considerable personal estate, consisting of divers estates and premises held upon lease for terms or a term of years, and other chattels real and personal, and of various other particulars to a large amount and value in the whole, and more than sufficient to have paid and satisfied all his just debts and funeral expenses. And the said E. F. was also in his life-time and at the time of his death seised or well entitled unto some considerable real estates lands tenements and hereditaments situate, &c. and particularly of or to divers freehold houses or tenements in L. aforesaid, and also to a close or parcel of land in F. in the county of L. of some considerable yearly

Statement of the debts due to the plaintiffs.

Debtor entitled to considerable estates real and personal.

(4) If a specialty creditor whose debt is a lien on the real assets receive satisfaction out of the personal assets, a simple contract creditor shall stand in the place of such specialty creditor against the real assets, so far as the latter shall have exhausted the personal assets in payment of his debt. With respect to the application of real assets when the personal estate is either exempt or exhausted, it seems that the real estate expressly devised for the payment of debts shall be first applied; 2dly, to the extent of the specialty debts, the real estate descended; 3dly, the real estate specifically devised, subject to a general charge of debts; Toll. Ex. 6th edit. 419; and see *Kidney v. Coussmaker*, 12 Ves. 154, 2d edit.

value respectively. And your orators further show unto your lordship that the said E. F. being so seised and possessed departed this life at or about, &c. intestate and without issue, leaving E. F. of, &c. his eldest brother and heir at law, and S. F. of, &c. his widow and relict (the defendants after named,) and that the said S. F. upon the death of the said intestate applied for and obtained letters of administration of his personal estate and effects to be duly granted to her by and out of the proper Ecclesiastical Court in that behalf, and the said S. F. thereby became and now is the legal personal representative of the said E. F. And your orators further show that under and by virtue of such letters of administration she the said S. F. or some person or persons by her order or for her use hath or have possessed, got in, and received the whole or the greatest part of the said intestate's personal estate and effects consisting of the various particulars aforesaid and to a considerable amount in the whole, and sufficient or more than sufficient to satisfy and pay all his the said intestate's funeral expenses and just debts. And the said E. F. the said intestate's heir at law, upon or soon after the decease of the said intestate entered upon and possessed himself of all his real estates and premises, and hath ever since been in such possession, and he or some person or persons by his order or for his \*use hath or have ever since been in the receipt of the rents and profits thereof, and the said E. F. now is in such possession and receipt. And your orators further show that since the death of the said intestate the said E. F. hath paid unto your orator A. B. the sum of £—— in part discharge of his said debt or sum of £——, but that the remainder thereof together with an arrear of interest on the whole of the said debt now remains justly due and owing unto your orator A. B. and the whole of the said sum of £—— and upwards does also still remain justly due and owing unto your orator C. D. from the said intestate's estate. And your orators further show that the said S. F. having possessed the said intestate's personal estate and effects as aforesaid, your orators have applied to and requested her to pay and satisfy unto your oratrix their said respective demands by and out of the said intestate's personal estate and effects, if the same were sufficient for that purpose. And your orators have also applied unto the said E. F. and requested him that if the said testator's personal estate and effects were not sufficient by reason of any application thereof or of any part thereof to the payment of any specialty creditors of the said intestate, that he would consent that the deficiency thereof might be raised by sale of a competent part of the said intestate's real estate, or that the said intestate's real and personal assets might be marshalled and his personal estate and effects applied in payment of his simple contract debts and his specialty debts paid out of his real estate. And plaintiffs well hoped, &c. BUT NOW SO IT IS, &c. [see form IV. p. 5.] And the said *defendants pretend* that the said E. F. deceased was not at the time of his death indebted to your orators or either of them in any sum or sums of money whatsoever, and that he never made or signed any such promissory note of hand to your orator A. B. as aforesaid. Whereas your orators charge the contrary, and that the said in-

Death of debt-  
or intestate,  
leaving E. F.  
his heir at  
law.

Administra-  
tion granted  
to his widow.  
That the wi-  
dow has got  
in the personal  
estate.

That the heir  
at law entered  
upon the real  
estates.

[ \*130 ]

That the wi-  
dow has paid  
part of the  
debt due to A.  
B., and the  
whole debt re-  
mains due to  
the other  
plaintiff.

Applications.

Pretence that  
the intestate  
was not in-  
debted to  
plaintiffs.

Pretence that the personal estate has been wholly applied in payment of specialty creditors.

Charge, that if so, the assets ought to be marshalled;

[ \*131 ]  
and the real estate sold or mortgaged.

Charge as to the title-deeds.

Prayer.

testate did duly make and sign such promissory note of hand in writing to your orator A. B. for securing his said debt theretofore justly due and owing thereon with interest at and after the rate as before mentioned. And your orators further charge that the whole of their said several debts and demands were, together with a large arrear of interest on your orator A. B.'s said debt, justly due and owing to your orators as aforesaid at the time of his the said E. F.'s decease, and which the said defendants will at other times admit, but then the said S. F. pretends that the personal estate was insufficient, and that she applied the same in or towards payment of the specialty creditors of the intestate, but what specialty debts in particular she pretends to have paid thereout she refuses to discover. Whereas your orators charge the contrary of such pretences to be the truth; and your orators are advised and humbly insist that if the personal estate and effects of said intestate have been exhausted by the said S. F. in paying or discharging of any of his specialty debts, then that your orators and the other simple contract creditors of the said intestate ought and are entitled in a court of equity to have the said intestate's assets marshalled and to stand in the place of such specialty creditors as to the said intestate's real estates, and to have satisfaction for their respective demands thereout to such amount and \*for so much as such specialty creditors shall have received out of the said testator's personal estate, and that such real estate or a competent part thereof ought to be mortgaged or sold for that purpose, and that the said intestate's personal assets ought to be applied solely in discharge of the debts of your orators and other the simple contract creditors of the said intestate. But nevertheless the said defendants under such or the like pretences as aforesaid, refuse to pay your orators or either of them their said demands; and the said defendants refuse to come to an account for the real or personal assets of the said intestate. And your orators further charge that the said defendant E. F. hath possessed the title-deeds and writings belonging or relating to the real estate of the said intestate, and which he refuses to produce or discover. All which actings, &c. [*see form VI. p. 5, interrogating to the stating and charging parts.*]

And that an account may be decreed to be taken of the moneys due to your orators in respect of their said several demands, and that an account may be also taken of the said intestate's personal estate and effects possessed or received by, or come to the hands of the said defendant S. F. or of any other person or persons by her order or for her use, and also an account of the rents and profits of the said intestate's real estate possessed or received by or by the order or for the use of the said defendant E. F., and that your orators may be paid their said respective demands out of the said intestate's personal estate, if the same shall be sufficient for that purpose, and to pay all other the said debts of the said intestate as well by specialty as by simple contract. But if the same shall be insufficient for that purpose, then that the said intestate's specialty debts may be raised and paid out of his real assets, and the simple contract debts of the said intestate paid out of his personal assets, and that proper directions may be given in that behalf. And if any of the said intestate's per-

sonal estate shall be or appear to have been applied in payment of the specialty debts of the said E. F. the intestate, then that your orators and all other his simple contract creditors may be declared to be entitled to a satisfaction out of his real estates, and to such amount as the specialty creditors shall have received out of his the said intestate's personal estate and effects; and that a sufficient part of the said real estates may be mortgaged or sold for raising the same, and that all proper parties may be decreed to join in such mortgage or sale, and that by and out of the moneys to arise therefrom your orators and all other the simple contract creditors of the said intestate may be respectively paid and satisfied their said several demands and their costs of this suit; And that all the title-deeds and writings relating to the said real estate may be produced, and all proper and necessary directions given for effectuating the several purposes aforesaid, and for the payment of your orators' said demands. [And for further relief, see form VIII. p. 5.] May it please, &c. [see form No. 1, p. 6.]

E. K.

\*XLIII. *Bill by the executors of an obligee in a bond and a simple contract creditor, on behalf of themselves and other creditors against the administratrix of debtor and his heir at law;—charging that the administratrix is in possession of the leasehold property, that she has not exhibited a correct inventory into the Ecclesiastical Court, and sets up a settlement as to part of the real estate, and claims her dower out of other part. Prayer for an account of what is due to the plaintiffs,—an account of intestate's personal estate, debts, &c. and the rents of his real estate, and for a sale of the real estate in aid of the personal estate.*(5) [ \*132 ]

Humbly complaining show unto your lordship your orators T. C. of, &c. and P. M. of, &c. executors of the last will and testament of R. B. late of ——— deceased, and as such bond and simple contract creditors of I. T. late of, &c. deceased, and also your oratrix M. N. of, &c. another creditor of the said I. T. by simple contract, on behalf of themselves and all other the creditors of the said I. T. who shall come in and seek relief by and contribute to the expense of this suit.

That the said I. T. having borrowed of or being indebted unto the said R. B. in the sum of £——, he for securing the payment thereof with lawful interest for the same, duly executed a bond or obligation in writing bearing date, &c. whereby he bound himself his heirs executors and administrators unto the said R. B. his executors administrators or assigns, for payment of the said sum of £—— with interest for the same at the rate of £—— per cent. per annum, at a time therein mentioned and long since past. As in and by, &c.

Debts due to two of the plaintiffs as executors of R. B.

That the said principal sum of £—— and all the interest thereof

(5) See the preceding form, p. 128, and the note to the same.

from — now remains justly due and owing by virtue of the said bond.

That the said I. T. on or about, &c. having occasion to borrow a certain sum of money, on that day wrote and sent a letter to the said R. B. by R. C. then the said I. T.'s clerk (the said I. T. being an attorney) in the words and figures following, (that is to say,) &c. And in consequence of such letter the said R. B. did on — advance unto the said R. C. for the use of the said I. T. the further sum of £——, for which the said R. C. signed and gave a receipt to the said R. B. in the words and figures following (that is to say,) &c. As in and by the said letter and receipt, &c.

That the said sum of £—— and all interest thereon now remain justly due and owing by virtue of the said letter and receipt.

Debt due to  
the other  
plaintiff.

That the said I. T. having on or about —, occasion to borrow a certain sum of money, he on that day wrote and sent by the said R. C. his clerk, to plaintiff M. N. in the words and figures following, (that is to say,) &c. in consequence of which she did on — advance unto the said R. C. for the use of the said I. T. the sum of £——, for which the said R. C. then gave her the following receipt (that is to say,) &c. As in and by the said letter and receipt, &c.

[ \*133 ]

Death of debt-  
or, intestate,  
leaving an  
only child his  
heir at law.  
Administra-  
tion granted  
to his widow.  
Intestate enti-  
tled to large  
real and per-  
sonal estate.

\*That the said I. T. departed this life on or about — intestate, being indebted to the said R. B. and plaintiff M. N. in such sums as aforesaid, and to some other persons, and he left M. T. his widow and M. T. the younger his only child and heir at law, and soon after his death letters of administration of his personal estate and effects were granted to the said M. T. the widow, by the proper Ecclesiastical Court.

That the said I. T. was at the time of his death possessed of or entitled to a considerable personal estate, and seised or entitled in fee-simple of or to divers freehold messuages lands tenements and hereditaments situate, &c. of large yearly value in the whole; and she the said M. T. the widow possessed all the said personal estate and effects or so much thereof as she was able, and she and the said M. T. the younger or one of them entered on the said real estate, and ever since have or hath been and now are or is in possession and receipt of the rents and profit thereof.

Death of  
plaintiff's tes-  
tator; his will.

That the said R. B. departed this life on or about —, having before his death duly made and published his last will and testament in writing bearing date, &c. and thereby gave all the residue of his personal estate unto *plaintiffs* T. C. and P. M. equally to be divided between them and appointed them executors thereof; and that shortly after his death they proved the same in the Consistory Court of the bishop of N. and thereby became and now are entitled to the sums of money due to the said R. B. as aforesaid. And *plaintiffs* have at several times applied to the said M. T. the widow and M. T. the younger, and requested them to pay the said several sums of money due to *plaintiffs* respectively as aforesaid. And *plaintiffs* well hoped, &c. BUT NOW SO IT IS, &c. [See form IV. p. 5.] And the said defendants

Probate there-  
of by his exe-  
cutors.

Applications  
to defendants.

Pretence that  
intestate never

*Pretend* that the said I. T. did not execute such bond as aforesaid, and that neither he nor the said C. R. signed such writings as afore-

said or either of them, and that no such sums as aforesaid were really advanced or lent to or received by him the said I. T. or that he in his life-time fully paid and satisfied all such sums and all the interest thereof, and that therefore no money was remaining due from him in respect thereof at the time of his death.

executed the bond, and that no moneys were really advanced to him.

*Charge the contrary*, and so the said defendants will at other times admit, but then the said M. T. the widow *pretends* that the personal estate and effects which the said I. T. was possessed of, entitled to, or interested in at the time of his death, were but of inconsiderable value in the whole, and that only some small part thereof was possessed by her the said M. T. the widow or by her order or for her use, and not nearly sufficient to satisfy *plaintiffs'* said demands.

Pretence that his personal estate was of small value.

*Charge the contrary*, and particularly that he was at the time of his death possessed of divers messuages, &c. held for some long term of years at small rents, and that the said M. T. the widow is now in the possession and receipt of the rents and profits of all such messuages, &c. unless she has sold the same, in which case a large sum of money has been received by her or by her order or for her use, \*as a consideration for the sale thereof, and he was also entitled to considerable sums of money due on bonds mortgages and other securities; but in order to conceal the real value of such personal estate, the said M. T. the widow hath not exhibited into the proper Ecclesiastical Court, or caused to be made any appraisement or inventory thereof, or if any such was exhibited or made, the same was defective, and many particulars of the personal estate which he was really possessed of at the time of his death were wholly omitted therein, and most of the particulars which are contained in such appraisement or inventory are therein appraised at sums much less than the same respectively were really worth, or than they were or might have been afterwards sold for. And *plaintiffs* are advised that the personal estate of the said I. T. ought to be first applied to pay the whole of the debts owing by him at the time of his death on specialty in preference to all his debts on simple contract, and that if such personal estate be not sufficient to pay the whole of his debts, then *plaintiffs* and his other specialty creditors are by law entitled to be paid the remainder thereof out of his freehold estate, and that *plaintiff* M. N. and his other creditors on simple contract are entitled in equity to a satisfaction of their respective debts out of his freehold estate, so far as his personal estate may be exhausted by his specialty creditors to the prejudice of his creditors on simple contract, and such real estate ought to be sold and the rents and profits thereof received since his death ought to be accounted for. But then the said M. T. the widow and M. T. the younger,

Charge that his widow is in receipt of the rents of the leasehold.

[ \*134 ]

That she has not exhibited a correct inventory into the Ecclesiastical Court.

That the personal estate ought to be first applied, and in case of a deficiency, the real estate ought to come in aid and be sold, and the rents accounted for.

*Pretend* that most of the messuages, &c. whereof the said I. T. was in possession at the time of his death are copyhold, and that such parts thereof as are freehold were settled for the benefit of them or one of them, and that therefore no part thereof is subject to the payment of his debts either in law or in equity.

Pretence that most of the intestate's messuages, &c., were copyhold, and of a settlement of the freehold parts.

*Charge the contrary*, and that the said defendants refuse to discover the particulars and nature of such messuages, &c. or the par-

Charge the contrary.

Claim of his widow to dower out of the freehold estates.

particulars of any settlement or settlements. And at other times the said M. T. *claims* to be entitled to dower out of all or some part of such freehold estates, but *plaintiffs* insist that she is not entitled to dower out of any part thereof, the said I. T. having only an equitable estate therein or some other estate whereof his widow is not dowerable. But the said defendants at other times

*Claim* some other right or interest to or in the said freehold messuages, &c. or some part thereof, but they refuse to discover the particulars thereof or how or in what manner they derive or make out the same. And the said defendants

Pretence of other incumbrances.

*Pretend* that there are or is some other mortgages, &c. and under such or the like pretences or others equally unjust and unreasonable, they the said M. T. the widow and the said M. T. the younger refuse to pay the moneys due to *plaintiff's* respectively as aforesaid or any part thereof, or to sell the said freehold messuages, &c. or any part thereof for such purpose, and they have got into their possession custody or power the deeds and writings relating thereto, and they refuse to produce the same. All which actings, &c. [*see form VI. p. 5, interrogating to the stating and charging parts.*] And that an account \*may be taken of the money due to *plaintiffs* respectively for principal and interest as aforesaid, and of the other debts owing by the said I. T. at the time of his death; and also an account of the personal estate and effects of the said I. T. possessed or received by or by the order or for the use of her the said M. T. the widow, and that such personal estate may applied in payment of his debts in a course of administration, and that the remainder of such debts may be paid out of his real estate, and the rents and profits thereof become due since his death, and possessed or received by or by the order or for the use of them, the said M. T. the widow and M. T. the younger or either of them, and that for that purpose such real estates or a competent part thereof may be sold, and that all proper persons may join in such sale, and that an account may be taken of all such rents and profits; and in order to such sale, that all the title-deeds and writings relating to such real estates may be produced. [*And for further relief, see form VIII. p. 5.*] May it please, &c. [*see form No. 1, p. 6.*]

Prayer.

[ \*135 ]

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\*XLIV. *Bill by husband and wife in right of the wife as administratrix of an obligee in a bond to attach a legacy to which the obligor was entitled, whilst in the hands of the testator's executor; (the plaintiffs had brought an action on the bond, to which the defendant pleaded his discharge, under an insolvent act, but admitted the debt; the plaintiffs thereupon took judgment for the debt and damages, and afterwards the legacy in question having been bequeathed to the defendant, they sued out a fi. fa. and took out a warrant for levying the debt and damages out of the legacy.) The Prayer is for an account of what is due in respect of the principal interest and costs at law and for payment thereof out of the legacy;*



—And in case the executor should not admit assets sufficient to pay the legacy, then for an account of the testator's personal estate, and the rents of the real estate charged with the payment of the legacy, and if necessary, for a sale of the real estate, and for an injunction to restrain the executor from paying over the legacy.(6)

To, &c.

Humbly complaining show unto your lordship your orator and oratrix H. Edgell of, &c. and E. his wife, that J. Dawe of, &c. (one of the defendants hereinafter named) by a certain bond or obligation in writing under his hand and seal bearing date —, became bound unto R. C. of, &c. the late father of your oratrix and since deceased, in the sum of £200, conditioned for payment unto the said R. C. his executors administrators or assigns of the \*sum of £100 with full interest for the same on the — day of —, as by the said bond to which your orator and oratrix crave leave to refer when produced will appear. And your orator and oratrix further show unto your lordship that the said R. C. departed this life on or about —, intestate, and shortly after his decease letters of administration of all and singular the goods chattels rights and credits of the said R. C. deceased were duly granted to your oratrix his only child and next of kin. And your orator and oratrix further show unto your lordship that the said sum of £100 and interest for the same was not paid to your oratrix or orator in right of your oratrix as administratrix as aforesaid, at the time in the condition of the said bond mentioned, and that thereupon your orator and oratrix commenced an action at law against the said J. D. for the recovery thereof, and that the said J. D. in Michaelmas Term in the said year — pleaded thereto, and by his said plea admitted that the said bond was his deed, and that he owed the said intestate at the time of his death the sum of £200, and that he detained the same from your orator and oratrix, but that they ought not to have execution against his person, because on the — day of — he was in parts beyond the seas, and according to a certain act of parliament of our lord the now king holden at Westminster in the county of Middlesex, in the — year of his reign, intituled "An act for the relief of certain insolvent debtors," afterwards returned and surrendered himself to the keeper of the King's Bench prison, and on the — day of — was duly discharged by virtue of the said act, whereby he became entitled to the benefit thereof. And your orator and oratrix further show unto your lordship that your orator and oratrix by their replication confessed the plea and took judgment for the said debt of £200 and £5 damages to be levied on the lands

[ \*136 ]

Death of the obligee; administration granted to his daughter.

Debt not paid.

Plaintiffs commenced an action at law.

The debt admitted.

Plea of the insolvent debtors' act as a bar to execution against the debtor's person.

Replication and judgment

(6) See the case of *Edgell v. Haywood and Dawe*, 3 Atk. 352; relief was granted as prayed. The court did not proceed in this case on the ground of a specific lien, but only considered the legacy as a part of the property of the debtor, which the creditor could not come at without the aid of the court. If after the judgment, or even after the *fi. fa.* the debtor had assigned the legacy *bonâ fide*, for a valuable consideration and without notice, it would have been good and prevailed against the plaintiffs; but if after the bill brought, and a *lis pendens* created as to the legacy, such assignment could not have prevailed; per Lord Hardwicke, S. C.

taken for the debt and damages.

Will of W. M. bequeathing a legacy of £1000 to the debtor.

[ \*137 ]

Death of the testator.

Probate by the executor who possessed himself of the personal estate, and entered upon the real estate.

The debt remaining unpaid, plaintiffs sued out a writ of *fi. fa.*

Plaintiffs took out a warrant

tenements goods and chattels of the said C. D. excepting his wearing apparel, bedding for himself and family, and working tools and implements necessary for his occupation, not exceeding £10 in the whole, pursuant to the said act. And your orator and oratrix further show unto your lordship that W. M. of &c. deceased was in his lifetime and at the time of his death seised in fee-simple of divers real estates, and possessed of considerable personal estate, and being so seised and possessed, the said W. M. being of sound mind, duly made and published his last will and testament in writing bearing date the — day of — and duly executed and attested as by law required for passing real estates, to the tenor and effect following (that is to say): “I, W. M. of, &c. do make this my last will and testament in manner following: first I give and bequeath unto Mrs. S. R. the sum of £1000 to be due and payable unto her by my executor whom I shall herein appoint, after the expiration of one month next after my decease; also I give to her all my household goods plate china-ware linen woolen and wearing apparel; also I give to my cousin J. Dawe the sum of £1000 to be due and payable unto him by my executor whom I shall herein appoint, after the expiration of one month after my decease; also I give unto R. W. and her brother F. W. the sum of £100 in trust nevertheless for the sole use of R. H. wife of J. H. exclusive of any right the said J. H. her \*husband shall or may claim, the same to be due or payable to her after the expiration of one month after my decease by my herein appointed executor; also I give devise and bequeath to Mr. T. Haywood of, &c. (the other defendant hereinafter named) and to his heirs for ever, whom I do hereby make ordain constitute and appoint my only whole and sole executor of this my last will and testament, all my goods lands and chattels, except what is hereinbefore given; and I do hereby revoke disallow and disannul all other legacies heretofore willed or made by me.” As by the said will or the probate copy thereof when produced to this honorable court will more fully appear. And your orator and oratrix further show unto your lordship that the said testator departed this life on or about the — day of — without having revoked or altered his said will, and upon or soon after his decease the said T. H. duly proved the same in the proper Ecclesiastical Court, and under and by virtue of such will and the probate thereof entered into and upon and obtained possession of the real and personal estate of the said testator to the amount of £10,000, and more than sufficient to pay the said testator’s debts and legacies. And your orator and oratrix further show unto your lordship that the said judgment being in full force and the said debt and damages remaining unpaid and unsatisfied, your orator and oratrix on, &c. sued out of the said Court of Common Pleas a certain writ of *fieri facias* against the goods and chattels of the said J. D. except as before excepted, and the said legacy so given to the said J. D. as aforesaid being then due but unpaid, and in the hands of the said T. H. as the executor of the said testator, your orator and oratrix lodged the said writ of *fieri facias* with the sheriff of Middlesex, and took out a warrant thereon for levying their said debt and damages out of the said legacy in

the hands of the said T. H. And your orator and oratrix hoped that he would have paid their said demand, BUT NOW SO IT IS, &c. [see form IV. p. 5.] And the said defendants pretend that your orator and oratrix ought not to be allowed to attach the said legacy of the said J. D. until the same is reduced into possession by him. Whereas your orator and oratrix charge that although at law they are unable to attach the said legacy in the hands of the said T. H. yet that he is compellable in equity to pay what is due and owing from the said J. D. to your orator and oratrix as aforesaid, and until the same is satisfied he ought to be restrained by the order or injunction of this honorable court from paying the said legacy to the said J. D., but which the said T. H. threatens to do; and the said T. H. also pretends that the said legacy was no charge on the said testator's real estate, and that his personal estate was insufficient to answer his the said testator's funeral and testamentary expenses and debts, and that in payment thereof it has been entirely exhausted. Whereas your orator and oratrix charge that the personal estate of which the said testator was possessed at the time of his death was very considerable, and much more than sufficient not only for the payment of the said testator's funeral and testamentary expenses and debts, and also to satisfy the several legacies given and bequeathed by the said testator's will, but nevertheless \*the said T. H. refuses either to admit assets sufficient for such purposes, or to set forth such account as is hereinafter required of him. And your orator and oratrix further charge that in case of any deficiency in such assets, that the said legacy ought to be raised out of the said testator's real estates, the same being according to the true and fair construction of the said testator's will charged thereon. (7) All which actings, &c. [see form VI. p. 5, *interrogating to the stating and charging parts.*] And that an account may be taken by and under the direction and decree of this honorable court of what is justly due and owing to your orator and oratrix from the said J. D. for principal and interest on their said debt, together with the costs at law which have been sustained by them; and that what shall appear to be due to them may be paid to your orator in right of your oratrix by the said T. H. as such executor as aforesaid out of what is owing to the said J. D. for the principal and interest of his said legacy of £1000; and in case the said T. H. shall not admit assets of the said testator sufficient to pay so much of the said legacy of £1000 as your orator and oratrix are entitled to, then that an account may be taken of the personal estate and effects of the said testator which have or might have been possessed by or for the use of the said T. H.; and in case the same shall be insufficient to satisfy the said demand, then that an account may be taken of the rents and profits of the said real estates which have or might have been received by the said T. H. since the said testator's death; and that

for levying the debt, &c., out of the legacy. Pretence that plaintiff's ought not to be allowed to attach the legacy.

Charge that the executor ought to be restrained from paying the legacy.

Pretence that the legacy was not a charge on the real estate, and that the personal estate was insufficient, and has been entirely exhausted.

[ \*138 ]

Charge that in case of a deficiency of assets, the legacy ought to be raised out of the real estate.

Prayer.

(7) "The goods, lands, and chattels are given altogether as one fund, and lands are inserted in the middle, and the whole are subject to the exception of what was given before; this I think amounts to the same as if he had given them subject to what was given before; therefore I think this legacy is a charge on the lands;" per Lord Hardwicke, 3 Atk. 357. And see *Noel v. Weston*, 2 Ves. & Bea. 269, 274.

such personal estate, and if necessary a sufficient sum of money to be raised out of the said testator's real estate, may be applied after payment of the said testator's funeral and testamentary expenses and debts, in discharge of the said demand of your orator and oratrix; and that the said T. H. may in the mean time be restrained by the order and injunction of this honorable court from paying over the said legacy of £1000 or any part thereof to the said J. D. or for his use. [*And for further relief, see form VIII. p. 5.*] May it please, &c. [*see form No. 1, and 4, p. 6.*]

- [ \*139 ] \*XLV. *Bill by creditors on behalf of themselves and all other creditors, parties to a deed of trust, executed by a merchant, who had assigned the moneys due on several policies of assurance upon a ship and her cargo (which had been lost at sea,) in trust for the benefit of his creditors—against the trustee, who was also a creditor to a large amount, and had been the merchant's agent in effecting the insurances;—Charging him with neglect of duty in making some of the insurances and mismanagement of part of the property assigned, also with having received part of the moneys assured, and applied the same to his own use;—Prayer for an account and an equal division of the moneys received by the trustee and for an appointment of a new trustee in his place.*

In the Exchequer.

To, &c.

Debtor sole owner of a ship sailed on a voyage with a large cargo on board.

Debtor effected two policies of insurance on the ship and cargo for 2100*l*.

The ship and cargo received damage on the voyage to the amount of 102*l*. 11*s*. 6*d*.

Humbly complaining show unto your honors your orators W. R. of, &c. T. B. of, &c. and A. C. of, &c. debtors and accountants, &c. [*see form No. 2, p. 2.*] on behalf of themselves and all other the creditors of J. S. (a defendant hereinafter named) who are parties to the deed of trust hereinafter mentioned, who shall come in and contribute to the expense of this suit, That in or about the month of October — the said J. S. was possessed of the entire property, and was the sole owner of a certain ship or vessel called the G. M. and being so possessed, the said J. S. sailed in the said ship or vessel as captain or master thereof on or about the 16th day of October — from Portsmouth to the islands of A. and D. in — with a considerable cargo on board. And your orators further show unto your honors that the said J. S. previously to his sailing on board the said ship caused two policies of insurance on the said ship and cargo to be underwritten by the Royal Exchange Assurance Company, whereby the said ship and cargo were insured at and from L. to A. and D. for 2100*l*. And your orators further show unto your honors that in the said voyage from L. to A. and D. the said ship and cargo received damage to the amount of 102*l*. 11*s*. 6*d*. whereby the said J. S. by virtue of the said two policies of insurance became entitled to receive of the said Royal Exchange Assurance Company

the said sum of 102*l.* 11*s.* 6*d.* And your orators further show unto your honors that M. L. (a defendant hereinafter named) was the agent of the said J. S. who was indebted to the said M. L. and for securing the said debt had given a mortgage of the said ship and also assigned to him the said two policies of insurance hereinbefore mentioned, which said mortgage and assignment was and were made as well for securing the said debt as such other moneys as the said M. L. might afterwards advance as such agent as aforesaid. And your orators further show unto your honors that the said J. S. having arrived in his said ship at the island of D. and having taken a cargo for the London market part thereof on his own account, and being about to return home wrote the following \*letter to his said agent M. L. (that is to say:) [*Informing his agent that he should sail a full ship on or before the 30th of July, and enclosing the bill of lading, and requesting the agent to make the following insurance at the Royal Exchange Assurance Office viz. 1000*l.* sterling upon goods, and 1000*l.* sterling upon freight.*] And your orators further show unto your honors that the said J. S. by his agent the said M. L. also caused a policy of insurance for 2200*l.* to be underwritten, for insuring the said ship and cargo on her said voyage from D. to L. And your orators further show unto your honors that the said J. S. sailed in the said ship the G. M. from the island of D. on his homeward-bound passage, and that the said ship with her cargo was unfortunately lost in a storm off the coast of France on or about the 27th September —, in consequence whereof, the said underwriters became liable to pay the respective sums mentioned in the said policies of insurance. And your orators further show unto your honors that the said J. S. not being able to pay his creditors the whole of their respective debts, and such inability arising from the aforesaid loss of the said vessel, the said J. S. on or about the 15th day of February — called a meeting of his creditors and proposed to assign the said policies of insurance and the moneys due thereon, and the said sums of 102*l.* 11*s.* 6*d.* due on the said policy of insurance for damage done on the said outward-bound voyage, together with a quantity of yellow saunders wood and fustic, in lieu of their respective demands upon him, to which proposal your orators as well as the rest of the creditors of the said J. S. acceded, and it was at the same time agreed that the said M. L. should be the trustee for the said creditors of the said J. S., whereupon by a certain indenture bearing date, &c. [*stating the deed,*] which said indenture was duly signed, sealed and delivered by the said J. S., M. L., your orators and the rest of the creditors of the said J. S. And your orators further show unto your honors that since the execution of the said indenture, the said defendant M. L. has received the sum of 2100*l.* on the said policy of insurance in the said indenture mentioned to have been made on the homeward-bound voyage of the said ship or vessel G. M., and retains the said sum of 2100*l.* in his own hands and applies the same to his own advantage and refuses to make any division of the said sum amongst the creditors of the said J. S. And your orators further show unto your honors that the said de-

Debtor being indebted to M. L. his agent, gave a mortgage of the ship and assigned the policies.

Debtor on his return voyage to England wrote to M. L.

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to effect an insurance at the Royal Exchange Assurance Office for 2200*l.* on the ship and cargo.

The ship sailed on her homeward bound passage and was lost in a storm.

Debtor being unable to pay, his creditors called a meeting of them.

Debtor assigns the policies, &c., to M. L. as a trustee for the creditors.

That the trustee has received the money on one policy and has applied the same to his own use.

That the trustee has received other sums on the other policies.

That the trustee suffered part of the property assigned to become spoiled without attempting to sell the same.

[ \*141 ]

Applications to defendant M. L.

IV.

Refusals, and pretence that he has not received the money on one policy.

Charge that he has or might have received the same.

That he did not obey his instructions in making the insurance,

and has made himself responsible for the amount.

Pretence that the underwriters refuse to pay because there were no goods on board at the time of the loss of the ship.

defendant M. L. has also received the sum of 102*l.* 11*s.* 6*d.* and also the sum of 1000*l.* on the said policies in that behalf, hereinbefore mentioned to have been made and assigned to him in trust for the creditors of the said J. S. And your orators further show unto your honors that the said defendant M. L. neglecting his said trust, suffered the said quantity of saunders wood and fustic to remain at — without ever attempting to sell or dispose of the same, whereby the said saunders wood and fustic have become totally spoiled, and also a considerable sum of money and more than the value thereof has become due for warehouse-room. And your orators submit that the said defendant M. L. ought to pay and divide between your orators and the other creditors of the said J. S. who have signed the said deed of trust the value of the said saunders wood and fustic, and take upon himself the payment of the said warehouse-room. And your orators further show that the said defendant M. L. after paying himself his said debt of 1194*l.* 6*s.* 8*d.* ought to have divided the said several sums of money equally between your orators and the other creditors of the said J. S. who are parties to the said indenture, for which purpose your orators on behalf of themselves and such other the creditors of the said J. S. have frequently applied to the said M. L. and requested him to make such equal distribution as aforesaid. But the said M. L. combining and confederating with the said J. S. and with divers other persons at present unknown to your orators, whose names when discovered your orators crave leave to insert as parties defendants hereto, with proper charges against them, refuses to comply with your orators' said requests, sometimes pretending that he has not received the said sum of £1000 insured on the said policy on the goods on board the said ship or vessel from D. to L. Whereas your orators charge that the said confederate has received the said sum of £1000 on the said policy, or if not that he might have received the same if he had used due diligence. And your orators charge, that if in truth any obstacle arises to prevent the said M. L. receiving the said sum due on the said policy, it is entirely owing to his own misconduct in not obeying the directions given by the said J. S. to make the said insurance at the Royal Exchange Assurance Office. Whereas your orators have lately been informed that the said M. L. made the said insurance on the said goods with private underwriters, and procured the policy to be underwritten in his own name, in which case your orators charge and humbly submit that the said defendant M. L. by such misconduct is himself become liable to answer to your orators and other the creditors of the said J. S. for the said sum of £1000 due on the said policy. And at other times the said confederate M. L. pretends that the several persons who have underwritten the said policies respectively, refuse to pay the said sum due on the said policy, because they allege that the said J. S. had not any goods on board the said ship at the time of the making the said policy, or at the time of the loss of the said ship. Whereas your orators charge that the said J. S. had goods on board the said ship to the value of £1000 and upwards at the time of the making of the said policy and at the time of her loss. And at

other times the said defendant M. L. will pretend that he never had the said policy for £1000 on the goods of the said J. S. shipped on board the G. M. from D. to L. in his possession. Whereas your orators charge that it was generally understood at the time of the execution of the indenture hereinbefore mentioned, and the said M. L. declared to the said creditors of the said J. S. that he had at that time the said policy in his possession. And your orators also charge, that if he had not a policy made in the name of the said J. S. in his possession but that the same was made in his own name, then that he deceived your orators and the other creditors of the said J. S. and that he ought to answer the value of the said policy, the obstacle (if any) to the recovery thereof arising from the \*said confederate M. L. having procured the said policy to be made out in his own name, and to be executed by private under-writers instead of the said Royal Exchange Assurance Company, contrary to the direction of the said confederate J. S. in that behalf. And at other times the said confederate pretends that he did make the said insurance on the said goods in the name of the said J. S. and with the London Assurance Company, but that they refuse to pay the same, and therefore as he has not collected the whole of the effects assigned by the indenture hereinbefore mentioned, he is not bound to divide among the creditors of the said J. S. any part of what he has collected. Whereas your orators charge that the said confederate M. L. after paying himself the said debt and expenses as hereinbefore mentioned, is bound from time to time to divide such sums of money as he has collected or shall collect, equally between the creditors of the said J. S. who are parties to the said indenture, but the said confederate M. L. refuses so to do or to permit your orators to see the said policy on the said goods, or in any manner to account for what he has collected or might have collected and received by virtue of the said indenture. All which actions, &c. [see form VI. p. 5, *interrogating to the stating and charging parts.*] And that the said defendant M. L. may be decreed by this honorable court (after paying himself his said debt of 1194*l.* 6*s.* 8*d.* and his other expenses) to account with your orators and the other creditors of the said J. S. parties to the said indenture who shall come in and contribute to the expense of this suit, for all sum and sums of money received by him from time to time by virtue of the said indenture. And if it shall appear that the said defendant M. L. as the agent of the said J. S. has neglected to obey the directions given him by the said J. S. in regard to the making the said insurance of £1000 on the goods of the said J. S. on board the said ship the G. M. from D. to L., then that he may be decreed to be liable to your orators and the rest of the creditors of the said J. S. parties to the said indenture for the same; and that the said defendant M. L. may be also decreed to account for the value of the quantity of saunders wood and fustic so possessed by him as aforesaid under the said deed of trust, and that the said defendant M. L. may be decreed to pay to your orators and the rest of the creditors of the said J. S. parties to the said indenture, an equal dividend in proportion to their respective debts, of all and every the sum and sums of money which the

Charge that there were goods on board.

Pretence that defendant M. L. never had the policy in his possession.

Charge the contrary, and that he ought to be answerable for the amount.

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Pretence that the insurance was effected in another office which refuses to pay, and that defendant M. L. is not bound to make any division until all the assets are collected.

Charge that after paying himself his own debt he is bound to divide the moneys collected from time to time, but he refuses so to do or to account.

Prayer.

said M. L. has received or which might have been received by him by virtue of the said indenture, as well as of such sum or sums of money as the said M. L. is become liable to pay by reason of his said neglect of the orders of the said confederate J. S. respecting the said insurance of £1000 on the said goods. And that the said M. L. may be removed from being the trustee under the said trust-deed, and that some other trustee may be appointed under the direction and decree of this honorable Court. [*And for further relief, see form VIII. p. 6.*] May it please, &c. [*see form No. 1, p. 6.*]

*Pray subpoena against  
M. L. and J. S.*

[ \*143 ] \*\*XLVI. *Bill by creditors against the assignees of a bankrupt and also the bankrupt, who was the acting executor under a will, and also the general agent and consignee of the testator, his co-executors who had not proved the will being also made defendants;—Prayer for an account of testator's personal estate, debts, &c. and to have the personal estate administered; Charging that part of the personal estate was existing in specie in the hands of the bankrupt at the time of his bankruptcy and had been possessed by his assignees.—Praying also for an account of what was due to the testator's estate from the bankrupt, and that the amount may be proved against the bankrupt's estate;—for a receiver to collect the outstanding personal estate, and particularly a quantity of cotton which had been bought by testator's agents in India with the balance of an account due from them, and had been consigned to the bankrupt as executor;—that the receiver may be authorized to insure the cotton, and to sell the same on its arrival, and also to receive the dividends to arise in respect of the debt to be proved against the bankrupt's estate, and for an injunction to restrain the bankrupt and his assignees from receiving the cotton and any outstanding personal estate.*

To, &c.

Humbly complaining sheweth unto your lordship your orator J. C. of, &c. for and on the behalf of himself and all other the creditors of W. S. formerly of, &c. and afterwards commander of the East India ship called the B., who shall in due time come in and contribute to the expense of this suit. That the said W. S. was at the time of his death justly and truly indebted to your orator in the sum of 200*l.* and upwards for goods sold and delivered, and that the said W. S. was at the same time indebted to divers other persons in several sums of money to a very large amount in the whole. And that the said W. S. so being indebted, departed this life at sea on board the said ship B. on or about the — of —, in the year —, having first duly made and published his last will and testament in writing, bearing date the — day of —, whereof he appointed

Debt due to  
the plaintiff.

Death of the  
debtor at sea.

His will.



executors and executrix J. B. of, &c. H. S. of, &c. and J. S. of, &c. together with the said testator's wife M. S. of, &c. And that some time after the said testator's death, the said J. B. alone duly proved his said will in the proper Ecclesiastical Court, and took upon himself the burthen of the execution thereof, and thereby became and now is his legal personal representative, but power was reserved of granting administration of the said testator's estate to the said H. S., J. S. and M. S. (the other executors of the said will) when they should apply for the same. And your orator further sheweth unto your lordship that under and by virtue of the probate of the said will the said J. B. possessed himself of and received the greatest part of the personal estate and effects of the said testator in E. to a very considerable amount in the whole, but the same were not as it was alleged sufficient for the payment of the said testator's funeral and testamentary expenses and debts, and the said J. B. did not apply the same or any part thereof in payment of what was due to \*your orator and several others of the creditors of the said testator. And your orator further sheweth unto your lordship that the said M. S. possessed herself of some part of the said testator's personal estate and applied the same to her own use, but she hath not acted as an executrix of the said will. And your orator further sheweth unto your lordship that the said J. B. having committed some act or acts of bankruptcy, a commission of bankrupt under the great seal of the United Kingdom of Great Britain and Ireland bearing date the — day of — was duly awarded and issued against him and he was duly found and declared bankrupt under the same. And that H. C. of, &c. T. C. of, &c. and S. W. of, &c. having been duly chosen and appointed assignees of the estate and effects of the said bankrupt J. B., an assignment thereof was duly executed to them by the major part of the commissioners in the said commission named. And your orator further sheweth unto your lordship that at the time of the bankruptcy of the said J. B. he was indebted to the estate of the said W. S., and some parts of the personal estate of the said W. S. were in the hands of the said J. B. in specie. And that the said H. C. T. C. and S. W. as assignees of the said J. B. have possessed themselves of such personal estate and they threaten and intend to apply the same in payment of the creditors of the said bankrupt under the said commission. And your orator further sheweth that the said W. S. was at the time of his death entitled to divers goods and merchandizes which he had left at M. in the East Indies for the purpose of being there sold on his account, by or under the directions of Messrs. A. and Co. of M. aforesaid, and that such goods and merchandizes were accordingly sold and that the proceeds thereof, as the same were from time to time received, were placed to the credit of the said W. S. or his estate in account with the said Messrs. A. and Co. And that the whole of such goods and merchandizes being so sold, the said Messrs. A. and Co. in or about the month of —, —, made out and stated a final account as between themselves and the estate of the said W. S. And that by such account it appeared as the fact is, that of the balance of the said account the sum of 6349 rupees or thereabouts,

One of the executors alone proved the same.

The acting executor possessed himself of the personal estate.

[ \*144 ]

The testator's widow also possessed herself of part. Bankruptcy of the acting executor.

The bankrupt at the time of his bankruptcy was indebted to the testator's estate and had some part of the personal estate in his hands in specie, and that the assignees have possessed themselves thereof. Testator entitled to goods, &c., in India, which were sold by his agents after his decease and by their account a balance appeared against them.

The balance invested in the purchase of cotton which was consigned to the executor the bankrupt, on account of testator's estate, and the agents signed an invoice thereof.

The captain signed a set of bills of lading.

[ \*145 ]

The ship still at sea and daily expected.

That an insurance ought to be effected, but the acting executor being an uncertificated bankrupt is unable to effect the same and the other executors named in the will refuse to act.

That a receiver ought to be appointed and authorized to insure the cotton.

Applications.

being about 727*l*. 10*s*. sterling was due and owing from the said Messrs. A. and Co. to the estate of the said W. S. And your orator further sheweth unto your lordship that the said Messrs. A. and Co. laid out and invested the said balance or sum of 727*l*. 10*s*. in the purchase of 97 bales of cotton, which they shipped on board the East India ship called the E. captain T. E. W. then bound to L., and consigned the said cotton to the said J. B. for account and risk of the estate of the said W. S. And your orator further sheweth that the said Messrs. A. and Co. duly signed an invoice of the said 97 bales of cotton, and that in such invoice it is expressly stated that the said cotton was consigned to the said J. B. for account and risk of the estate of the late captain S. of the ship B., and that freight was payable at E. at 4*l*. per ton of 50 cubical feet, and that insurance was ordered of the consignee in England. And your orator further sheweth that the said T. E. W. the captain of the said ship E. duly signed a set of bills of lading of the said cotton; \*and that by such bills of lading it is expressly stated that the said 97 bales of cotton were shipped by the said Messrs. A. and Co. and consigned to the said J. B. for account of the estate of the late captain S. or his assigns, freight for said goods being payable 60 days after arrival, at the rate of £4 per ton of 50 cubical feet. And your orator further sheweth unto your lordship that the said ship E. is still at sea on her passage to E. with the said 97 bales of cotton on board; and that the said ship is daily expected to arrive in E. but that duplicates of the said invoice and bills of lading have been sent to E. in other ships which have arrived; and that such duplicates of the said invoice and bills of lading have been delivered to the said J. B. since his bankruptcy. And your orator further sheweth unto your lordship that an insurance ought to be effected on the said 97 bales of cotton, so as to insure the safe arrival thereof in England, but that the said J. B. being an uncertificated bankrupt is unable to effect such insurance; and the said H. S. J. S. and M. S. although they have not renounced probate of the said will nevertheless neglect or refuse to act in the execution of the said will or to take charge of the said cotton, and the said H. C. T. C. and S. W. as assignees of the estate and effects of the said J. B. claim a right to receive the said cotton. And that under such circumstances a proper person ought to be appointed by this court to receive the said 97 bales of cotton; and that such person ought to be authorized to effect an insurance upon the said cotton, and after the same shall arrive in England to sell and convert the same into money, and out of such money to pay the expenses of such insurance and all proper and necessary expenses attending the receipt and sale of the said cotton, and that the surplus of such moneys ought to be paid into the bank in trust in this cause, and the same ought to be applied in due course of administration in payment of the debts of the said W. S. And your orator further sheweth unto your lordship that your orator hath frequently and in a friendly manner by himself and his agents, applied to the said J. B. H. C. T. C. and S. W. and requested them to account for all and every the personal estate and effects of the said W. S. which have been possessed by them respectively, and to

apply the same in a due course of administration in payment of what is due to your orator and the other unsatisfied creditors of the said W. S. And your orator well hoped that such his just and reasonable requests would have been complied with as in justice and equity ought to have been the case. BUT NOW SO IT IS may it please, &c. [see form IV. p. 5.] The said defendants refuse to comply with the said requests, sometimes pretending that the said W. S. was not at the time of his death indebted to your orator or any other persons, and though at other times the said defendants admit as your orator expressly charges the contrary of such pretence to be true, yet then they pretend that the personal estate of the said W. S. possessed by the said J. B. was of very small amount. Whereas your orator charges the contrary, and that so the truth would appear to be if the said defendant J. B. would set forth such accounts as are hereinafter prayed for, but which he refuses to do. And your orator \*further charges that at the time of the bankruptcy of the said J. B. some part of the personal estate of the said W. S. which was in E. was existing in specie, and was in the hands or possession of the said J. B. and that the same has lately been possessed by the said H. C. T. C. and S. W. who refuse to account for the same; and they sometimes allege that the said J. B. was the general agent and consignee of the said W. S. and was in the habit of advancing money to or for the use of the said W. S. in his life-time, and of his estate after his death on the faith of the consignments which were to be made to him for and on the account of the said W. S. or his estate. And that at the time of the bankruptcy of the said J. B. he was as such general agent and consignee, a creditor upon the estate of the said W. S. in a considerable sum of money due to him on the balance of his account with the said estate, and thereupon the said H. C. T. C. and S. W. as assignees of the estate and effects of the said J. B. claim to be entitled not only to hold the said personal estate of the said W. S. now in E. but also to receive the said cotton now on board the said ship E. and to apply the said personal estate in England, and also the said cotton when the same shall arrive, in liquidation of such balance so alleged to be due to the said J. B. Whereas your orator expressly charges that although the said W. S. did in his life-time employ the said J. B. as his general agent and consignee, and at the time of the death of the said W. S. an account was subsisting between him and the said J. B. and such account was afterwards continued between the said J. B. and the estate of the said W. S. yet your orator charges that at the time of the bankruptcy of the said J. B. the balance of the said account was not in favor of the said J. B. but on the contrary was in favor of the said estate of the said W. S., and that a considerable sum of money is now due upon such balance of the said account from the estate of the said J. B. to the estate of the said W. S. and that the amount of such balance ought to be ascertained and proved as a debt against the estate of the said J. B. And your orator further charges that even if a balance were due on such account as aforesaid from the estate of the said W. S. to the estate of the said J. B. which your orator doth not admit, yet that such balance is of small amount and much less than

Pretence that nothing is due to plaintiff.

Charge the contrary.

Pretence that the personal estate is very small.

Charge the contrary.

[ \*146 ]

Charge that at the time of the bankruptcy part of the personal estate was in specie, and has been possessed by the assignees.

Defendants allege that the bankrupt was the testator's agent and consignee, and was a creditor upon his estate to a large amount, and that his assignees are entitled to apply the testator's personal estate, and also the cotton upon its arrival, in liquidation of the balance due to the bankrupt.

Charge that the balance was in favor of the testator's estate, and ought to be proved as a debt against the bankrupt's estate.

Charge that if the balance is due to the es-

tate of the bankrupt, his assignees are not entitled to a priority over the other creditors.

[ \*147 ]

Charge in support of the prayer for an injunction.

Charge that the other executors refuse to prove or to act in the execution of the will.

Prayer.

the value of the said cotton. And that the said H. C. T. C. and S. W. are not entitled to apply the personal estate of the said W. S. now in E. and the said cotton when the same shall arrive, in payment of such balance in priority to the demands of your orator and the other creditors of the said W. S.; but on the contrary thereof, that the said cotton and all the other personal estate of the said W. S. ought to be applied in payment of the debts due to all the unsatisfied creditors of the said W. S. rateably and in proportion to their respective amounts. And that the said H. C. T. C. and S. W. are not as such assignees as aforesaid, entitled to any priority in respect of such alleged balance before the other creditors upon the estate of the said W. S. But that nevertheless the said H. C. T. C. and S. W. claim to be entitled to the said personal estate in E. and to the said cotton, and they refuse to concur in the appointment of a proper person to receive the said cotton on the behalf of all persons interested \*therein. And your orator further charges that the said H. C. T. C. and S. W. if they shall be permitted to receive the said cotton, threaten and intend immediately to sell the same, and to apply the proceeds thereof in payment of the creditors of the said J. B. without any regard to your orator and the other unsatisfied creditors of the said W. S., and that they ought to be restrained from so doing. And your orator charges that the said M. S. ought to account for so much of the personal estate of the said W. S. as was possessed by her, but that she refuses so to do, and that the said H. S. J. S. and M. S. although they claim to be entitled to take out administration to the estate of the said W. S. nevertheless refuse to do so, or to interfere in the execution of his will. All which actings, doings, pretences, and refusals, &c. [*see form VI. p. 5, interrogating to the stating and charging parts.*] And that an account may be taken by and under the directions and decree of this honorable court of all and every the personal estate and effects of the said testator W. S. which have been possessed or received by or by the order or for the use of the said defendants J. B. H. C. T. C. S. W. and M. S. or any or either of them. And that an account may in like manner be taken of all and every the funeral and testamentary expenses and debts of the said testator, and particularly of what is due and owing to your orator and the other unsatisfied creditors of the said testator; and that the personal estate may be applied in a due course of administration in payment so far as the same will extend, of the said funeral and testamentary expenses and debts, and that the amount of what was due and owing to the estate of the said W. S. from the said J. B. at the time of his bankruptcy may be ascertained, and that the same may be proved as a debt against the estate of the said J. B. under the commission of bankrupt issued against him as aforesaid. And that a proper person may be appointed by this honorable court to collect and receive the outstanding personal estate of the said W. S. and particularly to receive the said 97 bales of cotton now on board the ship E. as aforesaid; and that such person so to be appointed such receiver may be authorized or may be at liberty to lay out and expend a sufficient sum of money to insure the safe arrival of the said cotton in E.;

and may be directed to sell such cotton when the same shall arrive in E. and to receive the money to arise from the sale thereof, and to apply a sufficient part of such money in repaying what he shall extend in respect of such insurance as aforesaid, and in paying all necessary and proper expenses attending the receipt and sale of the said cotton, and to pay the surplus of such money into the bank in the name and with the privity of the Accountant-General of this court, in trust in this cause; and that such person so to be appointed such receiver may be directed to receive all such dividends and sums of money as shall arise and be paid in respect of the debt to be proved as aforesaid against the estate of the said J. B. And that the said defendants J. B. H. C. T. C. and S. W. may be respectively restrained by the order or injunction of this honorable court from collecting and receiving the outstanding personal estate of the said W. S. and particularly from receiving the said cotton now on board the said \*ship E. as aforesaid, and from intermeddling therewith; and that your orator and the other unsatisfied creditors of the said testator W. S. may have such further or other relief in the premises as the nature and circumstances of this case may require and to your lordship shall seem meet. May it please your lordship, &c. [see forms, No. 1, and 4, p. 6.]

[ \*148 ]

*Pray subpoena and injunction  
against J. B. H. C. T. C. and  
S. W. and subpoena against  
H. S. J. S. and M. S.*

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XLVII. *Bill by a judgment creditor on behalf of himself and the other creditors of the intestate, against his administrator and heir at law, praying a sale of mortgaged premises to pay off a mortgage made to the plaintiff, and in case of a deficiency to be admitted a creditor on the general assets of the intestate; praying also for payment of the arrears of an annuity secured by a demise of other premises, and by a warrant of attorney, to have a value set upon the annuity, and the premises sold; and in case of a deficiency to be admitted a creditor on the general assets; praying also for an account of the intestate's personal estate, and to have the same duly administered.*

Humbly complaining sheweth unto your lordship your orator H. M. of, &c. on behalf of himself and all other the creditors of T. H. who shall in due time come in and contribute to the expenses of this suit, That by indentures of lease and release bearing date respectively, &c. your orator in consideration of a certain post obit security for the sum of £—— therein mentioned, conveyed to the said T. H. the fee simple and inheritance of —— freehold unfinished house, situate, and being, &c. And your orator further sheweth that by indenture bearing date on the same —— day of —— the said T. H. in consideration of the sum of £—— then lent and advanced by your orator to the said T. H. granted and demised to your orator —— of the before-mentioned houses for the term of —— years by

Mortgage by  
demise to the  
plaintiff of  
certain pre-  
mises.

Grant of an annuity secured by demise of other premises.

[ \*149 ]  
Death of the mortgagor intestate.

Administration granted to deceased's brother and heir at law.

Statement of the amount due in respect of the mortgage and annuity.

Applications.

way of mortgage. And in the said indenture is contained a covenant for payment of the said £—— and interest, and the usual proviso of redemption. And your orator further sheweth that by a certain other indenture, bearing date the same —— day of —— the said T. H. granted and demised the other —— of the before-mentioned houses for the term of —— years in trust for the further and better securing to your orator, either by the receipt of the rents, or by sale or mortgage of the said last-mentioned premises, annuity or clear yearly sum of —— for and during the natural life of your orator, which annuity had been before granted to your orator by the said T. H. by a certain indenture bearing date on or about the —— day of ——.

As in and by the said several \*indentures to which your orator craves leave to refer when produced will appear. And your orator further sheweth unto your lordship that the said T. H. departed this life on or about —— intestate, and without issue, leaving T. H. of, &c. his only brother and heir at law, (the defendant hereinafter named) him surviving; whereupon the reversion of the said —— houses at —— aforesaid, descended to and became vested in the said T. H. subject to the said two terms of years. And your orator further sheweth that upon or soon after the death of the said intestate, the said T. H. obtained letters of administration of the goods, chattels, personal estate and effects of his said late brother, to be granted to him by and out of the proper Ecclesiastical Court, and by virtue thereof hath possessed himself of the personal estate and effects of the said intestate to a considerable amount. And your orator further sheweth that the said intestate, in his lifetime, paid the interest due to your orator upon the said mortgage, up to the —— day of ——, and the arrears of the said annuity up to the —— day of —— but the whole of the said principal sum of £—— together with all the interest thereon from the said —— day of —— now remains due to your said orator, as well as all the arrears of the said annuity from the said —— day of ——.

And your orator further sheweth that he is a judgment creditor of the said T. H. in respect of the said arrears of the said annuity, by virtue of a warrant of attorney made and executed by the said T. H. at the time of granting the said annuity, and on which judgment hath been duly entered up by your orator. And your orator further sheweth that the said —— houses comprised in the aforesaid mortgage being an insufficient security, your orator is advised that he is well entitled to have a sale of the said —— houses, and to have the produce thereof applied, as far the same will extend, in payment of the said principal sum of £—— and interest, and to be admitted as a specialty creditor against the general assets of the said intestate for the deficiency, and that he is also well entitled to have a value put upon his said annuity, and in like manner to have a sale of the said other —— houses, demised as aforesaid for the security of the said annuity, and to have the produce thereof applied, as far as the same will extend, in satisfaction of the value which shall so be set on the said annuity, and of the arrears due thereon, and to be admitted as a judgment creditor against the general assets of the said intestate, in respect of any deficiency. And your orator further sheweth that

he hath by himself and his agents, repeatedly applied to the said defendant T. H. for the purposes aforesaid; and your orator well hoped that the said T. H. would have complied with such your orator's requests as in justice and equity he ought to have done. BUT NOW SO IT IS, &c. [see form IV. p. 5,] the said defendant absolutely refuses so to do. And the said defendant sometimes pretends that the personal estate of the said intestate is small and inconsiderable. Whereas your orator charges the contrary thereof to be the truth; and so it would appear if the said defendant would set forth as he ought to do a full and true account of the personal estate and effects of the said \*intestate, and of his application thereof. All [ \*150 ] which actings, &c. [see form VI. p. 5, interrogating to the stating and charging parts.]

And that the said defendant may answer the premises; and that Prayer.  
an account may be taken of the principal sum and interest remaining due to your orator on the aforesaid mortgage security, and that the said mortgaged premises may be sold, and the produce thereof applied, as far as the same will extend, in satisfaction of what shall be so found due; and that your orator may be admitted as a creditor against the general assets of the said intestate in respect of the deficiency; and that a value may be set upon the said annuity of £——, and that an account may also be taken of the arrears of the said annuity, and that the said —— houses demised as aforesaid for the security of the said annuity may in like manner be sold, and the produce thereof applied, as far the same will extend, in satisfaction of the value so set upon the said annuity, and of the said arrears, and that your orator may be admitted as a creditor against the general assets of the said intestate in respect of the said deficiency, and that an account may be taken of the said intestate's personal estate and effects possessed or received by the said defendant, or by any other person or persons by his order or for his use; and also an account of the said intestate's funeral expenses and just debts, and that the said personal estate and effects may be applied in payment of what shall remain due to your orator in respect of the matters aforesaid, and of the other creditors of the said intestate, in a due course of administration. [And for further relief, see form VIII. p. 5.] May it please, &c. [see form No. 1, p. 6.]

J. L.

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XLVIII. *Bill by a bond creditor on behalf of himself and other creditors of the testator who had devised certain estates to his brother and heir at law, upon trust to sell, to go in aid of his personal estate—the surplus moneys to be laid out in lands to be settled to the like uses as certain other estates of which testator's brother was tenant for life under the will—The testator's brother entered into possession of the estates devised in trust to sell, and afterwards died, having made a will and leaving his eldest son his heir at law, who also entered into possession of the same estates, and afterwards conveyed them to trustees for the benefit of his*

*creditors—The prayer is—for an account of the testator's debts, and payment out of the personal estate, and the rents of the estates charged with the payment of the debts; and in case of a deficiency that those estates may be sold;—also for a production of the title-deeds; for an account of the rents received by the testator's brother and his son since his death—that the amount received by the testator's brother may be paid out of his assets, and in case his executors should not admit the same to be sufficient, then for the usual accounts of his personal estate, debts, &c.*

To, &c.

[ \*151 ]

Bond executed to the plaintiff for securing a debt due to him.

Debtor seised of certain estates.

His will.

Humbly complaining sheweth unto your lordship your orator A. B. a creditor of the right honorable R. C. late of, &c. deceased, and \*late Lord Chief Justice of the Common Pleas in —, on behalf of himself, and all other the creditors of the said R. C. who shall come in and seek relief by and contribute to the expense of this suit;

That the said R. C. having borrowed of and being indebted unto plaintiff in the sum of £—, he for securing the re-payment thereof with lawful interest for the same, duly executed a certain bond or obligation in writing bearing date, &c. in the sum of £—, with a condition thereunder written for making the same void, on payment by the said R. C. his heirs, &c. unto your orator his executors administrators or assigns of the said sum of £— with lawful interest for the same at a time therein mentioned and long since past. As in and by, &c.

That the said R. C. was in his life-time and for some time before and until the time of his death seised or otherwise well entitled in fee-simple of or to the manor or lordship of E. together with divers messuages or tenements farms lands and hereditaments situate and being within the parishes or townships of E. A. and H., and also of or to the manors or lordships of A. and W. and divers messuages farms lands tenements and hereditaments situate and being in the several townships of A. W. B., &c. and elsewhere in the county of L. a large value in the whole, and also possessed of a considerable personal estate and effects; and that the said R. C. being so seised, possessed, or entitled, and being of sound mind, memory and understanding, duly made and published his last will and testament in writing, bearing date on or about, &c. and which was executed by him, and attested in such manner as by law is required for devising and passing real estates; whereby after declaring it to be his will and mind, that, &c. [*directing his debts and legacies to be first paid out of his personal estate, and after devising the manors of A. and W. to his brother E. C. for life, remainder to trustees to preserve contingent remainders, remainder to his nephew R. C. for life, with remainders over, as therein mentioned, devised the manors of E. A. and H. to his said brother E. C. upon trust to sell or mortgage the same, to go in aid of his personal estate in case of a deficiency, and the surplus moneys to be laid out in lands to be settled to the same uses as the manors of A. and W.*] And the said testator appointed the said E. C. and R. C. executors of his said will.



That the said testator by a codicil to his will annexed bearing date, &c. which was also executed and attested, &c. after reciting, &c.

That the said testator departed this life on or about — without revoking or altering his said will, save by the said codicil, and without revoking or altering the said codicil, and without leaving any issue, and leaving the said E. C. his brother his heir at law, and his nephews, the said R. C. now Sir R. C. bart. R. C. W. C. and I. C. him surviving.

Death of testator without issue, leaving his brother his heir at law.

That the said testator was at the time of his death indebted unto *plaintiff* in the said principal sum of £—— upon the aforesaid security, and also to divers other persons upon sundry different securities to a large amount in the whole.

That upon testator's death E. C. and R. C. duly proved his said will in the proper Ecclesiastical Court, and by virtue thereof possessed \*all the personal estate and effects of or belonging to testator at the time of his death, or so much thereof as they were able to a considerable amount in the whole, and which as it is alleged, were very insufficient for the payment of testator's debts; and all testator's debts being made a charge upon testator's estates in E. A. and H. and which were more than sufficient for the payment thereof, and all and most of the said debts being due and owing upon securities, testator's executors applied all or the greatest part of testator's personal estate and effects in the payment of the legacies given by the testator's will, all of which have been long since paid and satisfied.

Probate by the executors.

[ \*152 ]

The personal estate being insufficient, and the real estate charged being ample security, the executors applied the personalty in payment of legacies.

That immediately upon or soon after testator's death, E. C. entered upon and took possession of all the real estate whereof testator died seised, and continued in possession and receipt of the rents and profits thereof until the time of his death.

The heir at law entered upon the real estate.

That E. C. departed this life on or about, &c. leaving the said Sir R. C. bart. his eldest son and heir at law, and having first made and published his last will and testament in writing, and thereby appointed his sons, the said R. C. and W. C. two of the nephews and devisees named in the will of testator R. C., executors thereof. As in and by, &c.

His death and will.

That upon the death of E. C. the said Sir R. C. and W. C. proved his said will in the proper Ecclesiastical Court, and by virtue thereof possessed themselves of all the personal estate and effects whereof the said E. C. died possessed, to a considerable amount and value in the whole, and more than sufficient for the payment of his debts, particularly to answer and satisfy so much of the personal estate and effects of R. C. as was possessed by E. C. in his life-time, and they have likewise possessed some parts of the specific personal estate and effects of or belonging to the said testator R. C.

Probate by the executors who also possessed assets of the first testator.

That upon the death of E. C. the said Sir R. C. by virtue of the said will of his uncle the said testator R. C. entered upon and took possession of all the said real estates so devised by the will of testator R. C. as aforesaid, particularly the estates and premises at E. A. and H. aforesaid, and he ever since hath been and still is in possession or receipt of the rents and profits thereof.

Upon his death his son entered into possession of the said estates charged.

That the whole of the said principal sum of £——, with an arrear

The debt due of interest for the same, still remains due and owing to *plaintiff* upon his aforesaid security, and that divers other of the debts due and owing from testator R. C. at the time of his death still remain unpaid.

Applications. That *plaintiff* hath at several times applied to the said Sir R. C. W. C. and R. C. and requested them to pay to him the principal and interest due on the aforesaid bond out of the estate and effects of the said testator R. C., and that divers other applications have also been made unto them by the several other unsatisfied creditors of the said testator for payment of their several debts. And *plaintiff* and such several other creditors well hoped, &c. BUT NOW SO IT IS, &c. the said Sir R. C. R. C. and W. C., combining with A. B. of, &c. and C. D. of, &c. and the honorable I. D. S. commonly called lady I. D. S. of, &c. [see form VI. p. 5,] absolutely refuse so to do; and the said R. C. pretends that *plaintiff* did not lend or advance to the testator R. C. the \*aforesaid sum of £—, or any part thereof, and that he never executed such bond to *plaintiff*, or that the said debt and all interest due thereon have long since been paid and satisfied, and that no money is now owing to *plaintiff* in respect thereof. Whereas *plaintiff* charges the contrary thereof to be the truth, and so the said confederate will at other times admit, but then the said Sir R. C. and W. C. pretend that the personal estate and effects which the said testator R. C. was possessed of or entitled unto at the time of his death were but of inconsiderable value in the whole, and that he was indebted to sundry persons to a considerable amount; and that all or the greatest part of his personal estate and effects which have been possessed by the said Sir R. C. and by the said E. C. deceased in his life-time, or by the said Sir R. C. and W. C. since his death, have been paid and applied in a due course of administration, and that no part of the said testator's personal estate and effects now remains in their hands undisposed of; and the said R. C. and W. C. pretend that the said E. C. never acted in the executorship of the said testator R. C. and that he never possessed any part of his personal estate or effects; and at other times admitting the contrary to be true, they pretend that the said E. C. was at the time of his death indebted to sundry persons in several large sums of money to a considerable amount in the whole, and that the personal estate and effects of the said E. C. were but of inconsiderable value, and that the same have been applied in discharge of such debts, and that only a small part thereof remains undisposed of and not nearly sufficient to answer *plaintiff's* demands thereon. Whereas *plaintiff* charges the contrary of all such pretences to be the truth, and that *plaintiff* is advised and humbly insists that the said R. C. and W. C. ought either to admit assets of E. C. come to their hands or use sufficient to answer *plaintiff's* demands thereon, or to account for the personal estate and effects of E. C. which have been possessed or received by them or either of them; and *plaintiff* is also advised and humbly insists, that if the personal estate and effects of the said testator R. C. which have been possessed or received by or come to the hands of the said Sir R. C. or of the said E. C. in his life-time, or of the said R. C. or W. C. since his death, should be found insufficient to answer the

Pretence that no money is due to the plaintiff.

[\*153]

Charge the contrary.

Pretence that the personal estate is insufficient, and has been duly applied.

That one of the executors never acted; but admitting the contrary the defendants pretend that his estate is insufficient to answer the demands thereon.

Charge the contrary of the above pretences, and that the defendants ought to admit assets.

aforesaid debt due and owing to *plaintiff*, and the several other debts due and owing to the rest of the unsatisfied creditors of the said testator R. C., such deficiency ought to be made good out of his real estate situate at E. A. and H. by his said will and codicil devised to be sold or mortgaged for payment of his debts in aid of his personal estate, and that the same ought to be sold or mortgaged for that purpose, and that the rents thereof become due since his death ought to be accounted for. But then said Sir R. C. pretends that the will and codicil of the said testator R. C. were not executed and attested in such manner as by law is required for devising and passing real estate, and that therefore on his death all his real estates including his said real estates at E. A. and H. descended or came to the said E. C. the said testator's brother as his heir at law; and that the said confederate Sir R. C. as the son and heir at law of said E. C., and as such the heir \*at law of testator R. C. his uncle, is now entitled thereto; Whereas *plaintiff* charges the contrary of such pretences to be true, but then said confederates R. C. W. C. and I. C. claim to be successively entitled by virtue of the said will of their said late uncle the testator R. C. to such parts of the said estates at E. A. and H. charged with the payment of testator's debts in aid of his personal estate as shall remain undisposed of for that purpose, as tenants for life in succession, with remainder to their first and other sons successively in tail male, expectant on the death of the said Sir R. C. without issue male, of which neither the said Sir R. C. nor the said confederates his brothers or any of them have any at present; And the said A. B. and C. D. allege that the said confederate Sir R. C. hath by some deeds or deed by him duly executed, conveyed and assigned all his right title and interest of and in the said estates and premises situate at E. A. and H. together with other estates therein mentioned, so devised to him by said testator R. C. as aforesaid, unto or in trust for the benefit of them or some of them, and the rest of the creditors of the said Sir R. C. but they refuse to discover the nature or material contents of such conveyance or assignment of what right or interest they have or claim to or in the said estates by virtue thereof. And the said lady I. D. S. pretends that she hath some mortgages or mortgage or other incumbrances or incumbrance upon or affecting said estates at E. A. and H. aforesaid or some part thereof, but she refuses to discover the particulars of such mortgages or incumbrances, or how much is now due for principal and how much due for interest thereon, and all the said several defendants except the said Sir R. C. refuse to join in any sale or mortgage of said estates and premises at E. A. and H. aforesaid, in order to raise money for the payment of the said testator's unsatisfied creditors. And the said defendants pretend, that there are or is some other mortgages or mortgage or other incumbrances or incumbrance upon or affecting the said estates or some part thereof, although they refuse to discover the particulars thereof or in whom the same are or is vested; and at other times they or some or one of them claim some other right or interest to or in the said estates or some part thereof, but at the same time refuse to discover the particulars thereof, or how or in what manner they derive or make out the same; and sometimes

Charge that if the personal estate is insufficient, the real estate charged by the will ought to be sold, and applied in aid of the personal estate.

Pretence by the heir at law that the will was not duly executed.

[ \*154 ]

Charge the contrary.

Claim on the part of the tenants for life, defendants.

Claim by other defendants as being trustees under a deed of trust for the benefit of creditors, executed by the heir at law.

Claim on the part of another defendant, as being a mortgagee.

Defendants refuse to join in a sale.

Pretences as to other incumbrances and claims.

Interrogatory  
as to a defend-  
ant's claim to  
a mortgage.

they pretend that some other persons or person have or hath some right or interest therein or in some part thereof, and they have got into their custody or possession all the title-deeds or writings relating thereto, and refuse to produce the same. All which actings, &c. [*see form IV. p. 5, interrogating to the stating and charging parts.*] And if the defendant lady I. D. S. shall claim to have any mortgage or security upon or affecting the said estates or any part thereof, that she may set forth when and by whom and by what deeds or writings or otherwise, and how and for what consideration and for what sums the same were or was made, and what sum or sums of money are or is due thereon, and how much for principal and how much for interest.

Prayer.

[ \*155 ]

That an account may be taken of the money due and owing to *plaintiff* for principal and interest on the said bond from the said \*testator R. C. ; and that an account may be also taken of all other the debts owing by the said R. C. at the time of his death, and remaining unpaid ; and that all such debts or sums of money may be paid out of the said testator's personal estate and effects, in case the same shall be sufficient for the payment thereof ; and if the said Sir R. C. R. C. and W. C. shall not admit assets of the said testator R. C. sufficient to satisfy such debts, then that an account may be taken of the personal estate and effects of the said testator R. C. and of the produce interest and income thereof which have been possessed or received by or by the order or for the use of defendant Sir R. C. and of said E. C. in his life-time, and since his death of defendants R. C. and W. C. respectively or any or either of them ; and that such personal estate and effects and the produce thereof may be applied in or towards payment and satisfaction of the said debts as far as the same will extend in a due course of administration ; and in case such personal estate and effects of testator R. C. should be found insufficient for the purposes aforesaid, then that such deficiency may be raised by sale or mortgage of the said testator's estates at E. A. and H. in the said county of L. pursuant to the directions of his said will and codicil, or a competent part thereof, and by and out of the rents and profits thereof become due since his death ; and for that purpose that the same estates or a competent part thereof may be sold or mortgaged pursuant to his said will as this honorable court shall direct, and that all proper or necessary parties may join in such sale or mortgage ; and that the money to arise by such sale or mortgage, after payment thereof in the first place of the money due and owing upon or by virtue of any mortgages or mortgage or other incumbrances or incumbrance affecting the said premises, if any such there be, may together with such rents and profits, be applied in satisfaction of the remainder of the said testator's debts remaining unsatisfied ; and in order thereto that the title-deeds and writings relating to the said real estates may be produced ; And for the purposes aforesaid, that an account may be taken by and under the direction and decree of this honorable court of the rents and profits of the said estates received by the said E. C. in his life-time, or by defendant Sir R. C. since his death ; and that the money which shall appear to have been received by the said E. C. for or in

respect of the said rents may be raised and paid out of his said assets received by the said defendants R. C. and W. C.; And if the said R. C. and W. C. shall not admit assets of the said E. C. sufficient to answer *plaintiff's* aforesaid demands thereon in respect to the several matters aforesaid, then that an account may be taken of the personal estate and effects of the said E. C. at the time of his death which have been possessed or received by or by the order or for the use of the said R. C. and W. C. or either of them, and also of his debts and funeral expenses. [*And for further relief, see form VIII. p. 5.*] May it please, &c. [*see form No. 1, p. 6.*]

J. S.

\*XLIX. *Bill by the trustees of certain lands held in trust for the Algebra Lecturer in the University of Cambridge, on behalf of themselves and other creditors against the executors of the manager and receiver of the rents—for an account of rents and produce of timber felled received by him, and also of his personal estate, debts, &c.* [ \*156 ]

Humbly complaining show unto your lordship your orators A. B. and C. D. of, &c. on behalf of themselves and all other the creditors of T. P. late of, &c. deceased, who shall come in and contribute to the expense of this suit, That your orators being seised of or otherwise entitled to certain lands tenements and hereditaments situate at, &c. in trust to pay the annual rents and profits thereof as a salary to the Algebra Lecturer in the University of Cambridge, appointed the said T. P. to be the manager of the said estates, and the receiver of the rents and profits thereof, at a yearly salary of £——. And your orators further show unto your lordship that the last account settled by the said T. P. with your orators in respect of the said estates was up to ——, and upon the balance of such accounts there was due from the said T. P. to your orators as trustees as aforesaid the sum of £——. And your orators further show that the said T. P. continued to be the receiver of the rents and profits of the said estates until his death, which happened about the month of ——, and the said T. P. not only received the rents of the said estates which amounted to the yearly sum of £—— from —— up to —— inclusive, but the said T. P. also received from the sale of timber cut and felled on the said estates in the month of —— the sum of £—— and several other sums of money from other falls of timber on the said estates between —— and the time of his death. And your orators further show that the said T. P. remitted in respect of his said receipts subsequent to ——, several sums of money amounting together to £——, and no more; so that at the death of the said T. P. a very considerable balance remained in his hands in respect of the rents and profits of the said estates and the produce of the said timber. And your orators further show unto your lordship that the said T. P. duly made his will, &c. [*appointing the defendants executors, who proved*

Appointment of the deceased as manager, and receiver.

His death.

Remittances made by him in respect of moneys received; but that at his death a large balance remained due.

His will.

*the will, and possessed the personal estate, &c. vide ante, p. 152.]*  
 Applications to the defendants. And your orators have repeatedly applied to and requested them to come to an account with your orators in respect of the rents and profits received by the said T. P. from — and of the produce of the timber felled thereon, and to pay unto your orators what should appear to be due to them from the estate of the said T. P. And your orators well hoped that the said defendants would have complied with such your orators' reasonable requests as in justice and equity they ought to have done. BUT NOW SO IT IS, &c. [see form IV. p. 5,] the said defendants refuse so to do. [Pretending that the personal estate is insufficient. Whereas plaintiffs charge the contrary, vide ante, p. 145.] All which actings, &c. [see form VI. p. 5, interrogating to the stating and charging parts.]

Prayer. And that the said defendants may answer the premises; and that an account may be taken of the rents and profits of the said estates, [ \*157 ] \*and of the produce of timber felled thereon which were received by the said T. P. or by any person or persons by his order or for his use subsequently to —; and also an account of the payments and disbursements of the said T. P. as the receiver and manager of the said estates subsequently to the time aforesaid; and that an account may also be taken of the personal estate and effects of the said T. P. received by the said defendants or either of them, or by any other person or persons by their or either of their order, or for their or either of their use, and also an account of the funeral expenses and debts of the said testator; and that your orators may be paid what shall appear to be due to them as such trustees as aforesaid out of the personal estate of the said T. P. in a due course of administration. [And for further relief, see form VIII. p. 5.] May it please, &c. [see form No. 1, p. 6.]

J. L.

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L. *Bill by bond creditors, co-partners, against the executrix and heir at law, and the parties interested under the will of one of the obligors deceased, and also against the co-obligor;—Praying for an account of what is due to the plaintiffs—an account of testator's personal estate and payment thereout; and in case of a deficiency, then for an account of the rents of the freehold and copyhold estates, and for a sale of a sufficient part of the same estates; and in case all his estates should be insufficient, then that the defendant the co-obligor may make good the deficiency. (The executrix charged with having misapplied the personal estate.)*

Humbly complaining show unto your lordship your orators A. S. and R. P. both of, &c. bankers and copartners, That T. T. late of, &c. deceased, and F. J. of the same place (the said T. T. and F. J. being in the said T. T.'s life-time copartners in trade,(8) in or about — having occasion for the sum of £— applied to and

(8) See note (2), ante, p. 125.

requested your orators to lend them the same, and your orators lent and advanced them such sum of £——; and for securing the repayment thereof with interest the said T. T. and F. J. executed a bond to your orators bearing date, &c. whereby they bound themselves, &c. [*stating the bond in the usual way.*] As in and by, &c. And your orators further show unto your lordship that the said T. T. and F. J. or either of them did not pay unto your orators the said principal sum of £—— or any part thereof at the time mentioned in the condition of the said bond or afterwards, and the said principal sum and an arrear of interest for the same remained due to your orators on the said bond from the said T. T. and F. J. at the time of the death of the said T. T., and still remains due to your orators. And your orators further show unto your lordship that the said T. T. was in his life-time and at the time of his death \*seised in fee-simple of or well entitled to some freehold messuages lands and tenements subject as it is alleged to some mortgage or mortgages of part thereof, and seised to him and his heirs of and well entitled to certain copyhold messuages cottages and tenements according to the custom of the manor of which the same were holden, and which had been surrendered by him to the uses of his will; and possessed of and well entitled to or interested in a very considerable personal estate consisting of, &c. and of divers other effects to a considerable amount or value in the whole; and being so seised of or entitled to such freehold and copyhold estates, and being of sound and disposing mind memory and understanding, the said T. T. in or about —— duly made and published his last will and testament in writing, and which was signed and published by him and attested in such manner as by law is required for devising freehold estates of inheritance; and he thereby first ordered and directed that all his just debts should be fully paid and satisfied, and subject thereto, he gave and devised, &c. [*stating the will.*] As in and by, &c. And your orators further show unto your lordship that the said testator departed this life in or about ——, without having revoked or altered his said will, without issue, leaving the said S. T. his wife and the said M. T. his sister and heir at law, and also his heir by the custom of the manor of which his said copyhold estates were holden; and the said S. T. upon or soon after his death duly proved the said will in the Pre-rogative Court of York, being the proper Ecclesiastical Court, and took upon herself the execution thereof; and she or some person on her behalf, or with her permission, by virtue of the said will or the probate thereof upon or soon after the said testator's death, entered upon and took possession of all his freehold estates by his said will devised to her for her life, and she hath ever since been and now is in the possession and receipt of the rents and profits thereof, and she also possessed herself of all the personal estate and effects of the said testator to a very considerable amount; and she thereout or out of the produce thereof paid the said testator's funeral expenses and all or most of his debts, your orator's said debt excepted; and the said M. T. the said testator's sister upon or soon after his death entered upon and took possession of the said copyhold messuage or tenement devised to her for her life as aforesaid. And your orators

Application to the plaintiffs for a loan.

Bond executed to the plaintiffs.

Debt not paid at the time of the death of one of the obligors, who was entitled to freehold and copyhold property, and a large personal estate.

[ \*158 ]

His will;

and death without issue, leaving a widow and his sister his heir at law and customary heir.

Probate of his will by his widow, who entered upon the freehold messuages, and possessed herself of the personal estate.

Debt still due  
the plaintiffs.

Applications  
to the execu-  
trix.

[ \*159 ]

Pretence that  
testator was  
greatly in-  
debted, and  
that the per-  
sonal estate  
is insufficient,  
and that no  
part is unad-  
ministered,  
except what  
may be com-  
ing in respect  
of the co-part-  
nership in  
which the tes-  
tator was en-  
gaged, and  
that he was  
not entitled to  
any freehold  
lands, &c.

Charge that  
the personal  
estate was  
very consider-  
able, and am-  
ply sufficient,  
and that the  
executrix has  
wasted and  
misapplied  
part.

further show unto your lordship that the said principal sum of £—— is still remaining due and owing to your orators with an arrear of interest, and that your orators have frequently since the said testator's death by themselves and their agents applied to the said S. T. as his personal representative, and requested her to pay the said bond debt and interest. And your orators well hoped that she would have paid the same accordingly, and that in case of any deficiency of the said testator's personal estate the same would have been answered and made good out of the said freehold and copyhold estates, as in justice and equity ought to have been the case. BUT NOW SO IT IS may it please your lordship that the said T. T. combining and confederating to and with J. P. and M. his wife, W. T. T. R. M. T. and F. J. and with divers other persons, &c. [*see form IV. p. 5.*] she the \*said S. T. absolutely refuses so to do. And she pretends that the said testator was at the time of his death indebted to several persons besides your orators on bonds and specialties and otherwise in several considerable sums of money, and that the said testator's personal estate and effects which have been possessed by her or by any person by her order or for her use were inconsiderable and insufficient to answer and satisfy such debts by specialty, and the said testator's funeral expenses and testamentary charges and other charges respecting the administration of his estate and effects; and she also pretends that there is not any part of the said testator's personal estate and effects outstanding and undisposed of or unpossessed or unadministered by her, except what may be coming from the said F. J. in respect of the said copartnership in which the said testator was engaged with him, and that she hath used her best endeavors and taken all due care and diligence to settle the accounts of the said copartnership with the said F. J. to obtain payment from him of what is coming therefrom to the said testator's estate, but hath not been able as yet so to do. And she also pretends that the said testator was not at the time of his death seised of or entitled to or interested in any freehold lands tenements or hereditaments, or if he was that she or any person on her behalf or claiming under her has not been nor is in possession of the rents and profits thereof, or at least that she is entitled to the rents and profits thereof for her life. Whereas your orators charge the contrary of such pretences to be the truth. And your orators further charge that the said testator at the time of his death was possessed of or entitled to a considerable personal estate and effects and more than sufficient to satisfy his funeral expenses and debts or at least his debts by specialty, and that the said defendant or some person by her order or for her use hath possessed or received, or without some wilful neglect or default might have possessed or received, the whole of such personal estate and effects, and your orators charge that the said defendant S. T. hath wasted and misapplied part of the said testator's personal estate, and has made divers payments thereout which ought not to have been made thereout, and hath permitted parts of the said testator's personal estate to be possessed or received by other persons as a legacy, or in satisfaction of debts by simple contract, and so the same would appear if the said defendant would set forth a full true



and particular account of all the said testator's personal estate goods chattels and effects possessed by her, or by any person or persons on her behalf, or for her use or by her permission, and would set forth how she has sold or disposed of and applied the same, and also a full true and particular account of the said testator's personal estate and effects remaining outstanding and unpossessed by her, but this she refuses to do; and in case the said testator's personal estate shall not on a fair account to be taken thereof be sufficient to answer your orators' said debt, your orators insist that the deficiency ought to be made good out of the said testator's freehold and copyhold estates, and that the same or a sufficient part thereof ought to be sold for that purpose; but this the said defendants S. T. and J. P. and M. his wife, W. T. T. R. and M. T. severally refuse to consent to, \*although they have not any title to the said freehold and copyhold estates or any part thereof except under the said testator's will; and the said S. T. and M. T. refuse to account for the rents and profits of the said estates received by them or for their use, or to apply the same in or towards the payment of your orators' said debt. And the said W. T. T. R. M. T. and J. P. and M. his wife, severally pretend that the said testator's personal estate and effects are sufficient to answer and satisfy your orators' said debt and all the other debts, and they therefore object to any sale being made of any of the said freehold and copyhold estates for payment of your orators' debt. And the said several defendants or some of them at times set up divers claims to the said freehold and copyhold estates in opposition to the said will. And they at times pretend and insist that the said F. J. as a co-obligee in the said bond, or as the surviving partner of the said testator, ought to pay your orators the said bond debt; but the said F. J. pretends and insists that the said testator or his estate has had the benefit of the said sum of £—— the consideration of the said bond, and that he has not any effects of the said testator in his hands coming to the said testator's estate, and therefore that the bond ought to be paid by the said S. T. out of the said personal estate; or in case of a deficiency of such personal estate out of the said freehold and copyhold estates. Whereas your orators insist that in case of any deficiency of such the said testator's real and personal estates to satisfy the said bond debt, the said F. J. ought to answer and pay the same and make good the said deficiency, but he refuses or declines so to do. All which actings, &c. [*see form VI. p. 5, interrogating to the stating and charging parts.*]

And that an account may be taken by and under the direction and decree of this honorable court, of what is due for principal and interest on the said bond; and that an account may also be taken of the personal estate and effects of the said testator, possessed by or come to the hands of the said S. T. or any person by her order or for her use or with her permission, or which without her wilful neglect or default might have been possessed by her; and that she may be decreed to pay to your orators what shall appear to be due and owing to them for principal and interest on their said bond out of the said testator's personal estate in a due course of administra-

Charge that in case the personal estate is not sufficient, the deficiency ought to be made good by sale of the freehold and copyhold estates.

[ \*160 ]

Pretence that the co-obligee ought to pay the plaintiff's debts, but that he insists that the testator's estate ought to pay the same.

Prayer.

[ \*161 ] tion. And in case the same shall not be sufficient for that purpose, then that an account may be taken of the rents and profits of the said testator's said freehold and copyhold estates received by them the said defendants S. T. and M. T., respectively, or for their use; and that what shall appear to have been received by them or either of them or a sufficient part thereof may be applied in or towards making good the said deficiency; and in case the said several funds shall be insufficient for paying and answering your orators' said debt and interest, then that a sufficient sum of money may be raised by sale or mortgage of the said testator's said freehold and copyhold estates or a sufficient part thereof, subject to such mortgage or mortgages as are now subsisting thereon, for making good such deficiency, and applied accordingly; and that the \*said S. T. M. T. &c. &c. and all proper parties may join in such sale or mortgage; and in case all the said testator's estates shall be insufficient for payment of your orators' said bond debt, then that the said defendant F. J. as a co-obligor in the said bond may be decreed to answer and make good such deficiency to your orators. [*And for further relief, see form VIII. p. 5.*] May it please, &c. [*see form No. 1, p. 6.*]

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LI. *Bill by a joint and separate creditor of certain bankers insolvents, against the trustees under the deed of trust executed for the benefit of the creditors, praying for an account of the separate estate of one of the insolvents, and to be paid pari passu, with his other separate creditors, and also to have the deed of trust established; and an account taken of all the trust property possessed by the trustees, and of their application thereof; and for a receiver as to the joint and separate effects.*

States that the defendants J. S. &c. who had for some time carried on the trade or business of bankers in copartnership together in New Bond-street aforesaid, under the style or firm of Messrs. S. & Co. did in or about the month of — become embarrassed in their circumstances and stop payment.

That by a certain indenture of bargain and sale and assignment of three parts, bearing date, &c. and duly made and executed by and between, &c. [*the defendants the bankers assigned over their estates and property to defendants I. T., &c. the trustees, for the benefit of their creditors and upon the trusts therein mentioned.*]

That by a certain other indenture bearing date on or about —, and duly made and executed by and between, &c. [*a further assignment made to the trustees.*] As in and by, &c.

That *plaintiff* was a party to and signed the said trust-deed as a joint creditor of the said defendants J. S. &c. for the sum of £—— and upwards, which was then justly due and owing to *plaintiff* from them on the balance of his banking account.

That he was at the same time a joint and separate creditor of the said defendants J. S. &c. upon the joint and several bonds of the

said J. S. &c. together with one G. T. S. who was at the time of the execution of such bond carrying on trade in co-partnership with the said defendants J. S. &c., conditioned for re-transferring to *plaintiff* at the time therein mentioned and long since past, the sum of £—— of certain stock therein mentioned which *plaintiff* had lent to the said banking-house, and for payment in the meantime to *plaintiff* of the dividends which would have accrued due to him on the said stock if the same had not been transferred by him.

That the said defendants I. T. &c. took upon themselves the execution of the said trusts and by virtue thereof possessed themselves of all the said trust property, and have by sale thereof and by collecting \*in the debts due to the said banking-house and otherwise received moneys to a very large amount. [ \*162 ]

That the said trustees never until the month of —— last made any dividend of the said trust effects, and then divided only —— in the pound to the joint creditors of the said banking-house.

That they had long before in their hands a much larger sum of the joint property than was necessary to have made a much more considerable dividend, and they have also long had and now have in their hands very large sums of money arising from the separate estates and effects of the said defendants J. S. &c. and particularly of the said defendant J. S., but all such moneys being deposited in the banking-house of Messrs. —— of which the said defendant I. T. is a partner, and the said I. T. being the trustee who has chiefly acted in the said trust, moneys have been permitted to remain in the said banking-house of the said Messrs. —— with a view to the private advantage of the said banking-house.

That the trust funds in the hands of the said trustees would have been greatly increased, but that the said trustees under pretence of some custom or usage amongst bankers as to short bills paid over to certain country bankers, or permitted them to receive several sums of money amounting in the whole to £—— and upwards.

That such payments were made with a view to give a preference to such country bankers or some of them, with whom the said trustees or some or one of them were or was in some manner connected.

That there are various parts of the said trust effects to the amount of £—— and upwards which have not been received, and by reason of the negligence of the said trustees have become in a doubtful state.

That it was not required or expected that the creditors of the said defendants J. S. &c. who had security for their debts, should become parties to the said trust indentures; and *plaintiff* therefore having in respect of the said joint and several bond of the said J. S. &c. a collateral security by the assignment of certain mortgages on the property of P. B. esq. at, &c. and also of certain legacies payable at the death of a Mr. A., and known in the transactions of the said house of S. and Co. by the term of the Berkshire legacies, was made a party to the said trust indentures only in respect of the sum of £—— and upwards due to him on the balance of his banking account and not in respect of the said joint and several bond of the said house.

That learning that the said defendants I. T. &c. had in their hands very large sums of money arising from the separate estate of the said defendant J. S. unapplied by them to the purpose of their trust, *plaintiff* as a separate creditor of the said defendant J. S. by virtue of the said joint and separate bond, caused the same to be attached in the hands of the said trustees by a proceeding in the lord mayor's court of London in or about the month of —.

[ \*163 ] That *plaintiff* afterwards withdrew the said attachment in consequence of two agreements in writing, one of which was signed by the said defendants I. T. &c. and the other of which was signed by W. L. as the solicitor of *plaintiff*, and such agreements were in \*the words and figures or to the purport and effect following, that is to say: [*stating them.*] As in and by, &c.

That although the said trustees did in the month of — in the said agreement mentioned declare the said trusts to be perfected, and did then make such dividend of — in the pound on the joint estate as hereinbefore stated, yet the said trustees have rendered no account to *plaintiff* of the separate estate of the said defendant J. S. nor have made to him any payment in respect of his said bond, although they have and then had in their hands much more than sufficient to pay *plaintiff* in full in respect of his said bond, and to pay in full all other, if any, the separate creditors of the said defendant J. S.

That he hath by himself and his agents since the said — day of — repeatedly applied to and requested the said defendants I. T., &c. to come to a just and fair account with him in respect of the separate estate of the said defendant J. S. and to pay to him what is due to him on the said bond *pari passu* with the other separate creditors of the said defendant J. S. and the plaintiff hath in like manner applied to the said defendants to come to a just and fair account with him and the other creditors who were parties to the said deed of trust for all other the sums of money received by them or either of them under and by virtue of the said trusts. And *plaintiff* well hoped, &c. BUT NOW SO IT IS, &c. [*see form IV. p. 5.*]

*Pretence of an insufficiency of assets.*

*Charge the contrary*, and so it would appear if the said defendants [*the trustees*] would set forth as they ought to do a full true and particular account of all and every the said trust estates and effects possessed or received by them or any or either of them, or which but for their wilful default they might have possessed or received, and of their application thereof.

*Charge* that the said defendant J. A. party to the said trust indentures, had before the making thereof been found and declared a bankrupt, and an assignment of his estate and effects had been made to the said defendants E. H. and I. S. together with H. E. of, &c. but at the time of executing the said trust indentures, it was expected that the said commission would be superseded, and it was thereby provided that if the said commission was not superseded within a certain time therein mentioned and long since past, that the said indentures should be considered as void against the said defend-

ant J. A. but should nevertheless be in full force with respect to all other the parties thereto or to such effect.

*Charge* that the said H. E. was soon afterwards removed from being such assignee, and the said defendant I. T. hath been duly chosen assignee in his stead and a proper assignment of the estate and effects of the said defendant J. A. hath been executed unto the said I. T. together with the said defendants E. H. and I. S.

*Charge* that the said defendants E. H. I. S. and I. T. as such assignees or otherwise claim to be interested in the execution of the trusts of the said indentures.

*Charge* that the said defendant J. S. is now a resident at M. in the \*East Indies, and the said defendant G. P. at the island of M. or at some other places beyond the seas out of the jurisdiction of this court. All which actings, &c. [*see form VI. p. 5, interrogating to the stating and charging parts.*]

[ \*164 ]

And that the said defendants I. T., &c. may set forth a full, true and particular account of all and every the said trust estate and effects and all the particulars whereof the same consisted, and the quantities, qualities, full, real and true values of all and every such particulars which have been possessed or received by or come to the hands of the said defendants [*the trustees*] or of any other person or persons by their or any of their order or for their or any of their use; and how and in what manner and when and where, and by and to whom, and for how much the same and every part thereof have been sold and disposed of, and what parts thereof and to what value and amount now remain undisposed of and what is become thereof.

Interrogatories for an account of the trust estate and effects, and the application thereof.

And that the said defendants may answer the premises. And that an account may be taken of the separate estate and effects of the said defendant J. S. which have been possessed and received by the said defendants [*the trustees*] and also an account of his separate debts, and that *plaintiff* in respect of his aforesaid bond may be paid from the separate estate of the said defendant J. S. *pari passu* with his other separate creditors. And that the said deed of trust may also in all other respects be established and carried into execution by and under the direction of this court, and that an account may be taken of all and every other the trust estate and effects which have come to the hands of the said defendants [*the trustees*] or of any or either of them or any other person or persons by their or any or either of their order or for their or any or either of their use, or which, without their wilful neglect or default, might have been received by them. And that an account may also be taken of the payments and disbursements of the said defendants [*the trustees*] for and in respect of the matters aforesaid, and that some proper person may be appointed to receive and get in the outstanding joint and separate estate and effects of the said J. S., &c. [*And for further relief, see form VIII. p. 6.*] May it please, &c. [*see form No. 1, p. 6.*]

Prayer.

LII. *Prayer of a bill filed by the joint creditors of bankrupts partners in different firms—praying to have an account taken of the separate estate of C. S. one of the bankrupts, possessed by his assignees, and also an account of his separate debts—also to have an account taken of the debts due from the different firms which had been proved under the commissions of bankrupt issued against them, and that the separate estate of C. S. after payment of his separate creditors, may be applied towards payment of the partnership creditors.*

[ \*165 ]  
Interrogatory  
before prayer,  
for a discovery  
of the separate  
estate of C. S.

And that the said confederates may set forth a full true and just \*account and particular of the separate estate and effects of the said C. S. which have been sold or disposed of or possessed or received by them or either of them, or by any other person or persons by their or either of their order or for their or either of their use, and of the produce thereof and what part thereof now remains in their hands undisposed of.

Prayer.

And that the said defendants may answer the premises, and that an account may be taken of the separate estate and effects of the said C. S. which have been possessed and received by the said M. M., &c. [the assignees] or either and which of them as such assignees as aforesaid, and also an account of the separate debts of the said C. S. which were due and owing from him at the time of the bankruptcies aforesaid; and that an account may also be taken of the partnership debts which were due and owing from the said C. S. and T. S. at the time of the bankruptcy aforesaid, and which have been proved under the said commission issued against them as aforesaid, and also of the partnership debts which were due and owing from the said C. S. &c. at the time of their bankruptcy aforesaid, and which have been proved under the said commission issued against them; and that the separate estate and effects of the said C. S. possessed and received by the said defendants which shall remain after payment of his separate debts may be applied rateably and proportionably between and in satisfaction of the partnership creditors of the said C. S. and T. S. and the partnership creditors of the said C. S. &c. and that for those purposes all proper directions may be given. [And for further relief.]

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LIII. *Interrogatories for an account of a testator's personal estate, and the application thereof by the defendant, and also of the testator's debts and what remain unpaid;—also of his moneys out at interest, and on what securities;—of the interest and dividends accrued due in respect of the personal estate, and of the moneys received by the defendant;—also of the mortgages and incumbrances affecting the testator's estates, and in whom vested;—also for an account of the testator's real estates, the rental thereof, and*

*of the rents and profits received by the defendant ;—of the rental of a particular manor and of the fines set and payable upon the renewal of any leases, and of all other casual profits, and of the moneys received in respect thereof and from whom.*

And that the said A. D. may either admit assets of the said B. P. come to his hands or use sufficient to answer your orator's aforesaid demands thereon, or may set forth a full true and just inventory and account of all singular the goods chattels personal estate and effects whatsoever which the said B. P. was possessed of interested in or entitled to at the time of his death, and which were not specifically bequeathed by his said will, and all the particulars whereof the same consisted, and the quantities qualities full real and true values of all and every such particulars; and whether all or some \*and which of such particulars have not and when been possessed or received by or come to the hands of him the said A. D. or of some and what person by his order or for his use, and how and in what manner and when and where and by and to whom and for how much the same and every or any and what parts or part thereof have or hath been sold or disposed of, and whether any and what parts thereof and to what value and amount now remain undisposed of, and what is become thereof; and also a particular account of all and every the debts whatsoever which were justly due and owing from the said B. P. at the time of his death, and to whom and for what and on what securities if any the same were respectively due, and whether any and what sums of money have been since paid in or towards the discharge of all or any and which of the said debts, and when and by whom and to whom and for what, and whether any and what sums or sum of money do or doth now remain unpaid on account thereof.

As to the personal estate,

[ \*166 ]

and the application thereof.

As to debts,

and what remain unpaid.

And that the said defendant may also set forth all and every the particulars of the personal estate of the said testator, which were out at interest at the time of his death, and on what government or other security or securities and in whose name or names, and what rate of interest was payable thereon respectively; and whether the whole or any and what part of all or any and which of such principal sums have or hath been continued on such securities respectively during all or any and what part of the time since the death of the said testator, and what sums or sum of money have or hath been received and when and by whom and for whose use and from whom by sale of all or any and what part of such government securities, or in or towards discharge of the principal money due on all or any and which of such private securities, and whether some and what sums or sum of money which were or was part of the personal estate of the said testator at the time of his death, and which arose therefrom, have or hath not been since, and when, placed out at interest in any and what public or private securities or security and in whose name or names and at what rate of interest, and what particular sum or sums in such public securities or security were or was purchased with each of such sums of money, and the dates parties names and all other material contents of all and every such private securities or security; and whether the whole or any and what part

As to moneys out at interest, and on what securities.

of all or any and which of such sums hath ever since the same were so respectively laid out, or for any and what times or time afterwards continued on such security or securities respectively, and what sums or sum of money have or hath been received and when and by whom and for whose use and from whom by sale of any and what part of the principal money in all or any and which of such public securities, or in or towards the discharge of the principal money due on all or every and which of such private securities.

As to the interest and dividends accrued due in respect of the

[ \*167 ]

personal estate, and of the moneys received by the defendant,

and what part was applied to his own use.

As to mortgages and other incumbrances.

As to the real estates, the rental thereof,

And that the said defendant may also set forth a full true and just account of all and every sum and sums of money which have from time to time since the death of the said testator become due from the interest or dividends of or on or in respect of the personal estate of the said testator, or the produce thereof or any part thereof, and when and on what principal sums or sum, securities or security, the same and every particular thereof become due, and a full true and just account of all and every sum or sums of money which hath or have been received by or by the order or for the use of him the said defendant, for or in respect of the interest or dividends of such personal estate, or the produce thereof or any part thereof, and when and from whom, and for the interest or dividends of what principal sums, and on what security and when due, all and every such sums were respectively received. And that he may particularly set forth whether he hath not at any and what time or times applied all or any and what part or parts of the personal estate of the said testator, and of what value, to or for his own use.

And that the said defendant may also set forth whether there is or are any or what mortgage or mortgages, term or terms of years, incumbrance or incumbrances upon or affecting the said estates, or any and what part thereof, and when and by whom and to whom, and by what deeds or writings or otherwise and how and for what considerations and for what sums the same was or were made, and in whom the same is or are now vested and for whose benefit, and what sum or sums of money is or are now due thereon and to whom and where all and every such persons live, and may set forth what is become of the title-deeds of the said estates.

And that he may also set forth the names and places of abode of all and every the person and persons in whom any legal or equitable estate right title or interest charge or incumbrance in or to upon the said premises in possession reversion or remainder is vested, and the particulars of such estate right title or interest charge or incumbrance, and how and in what manner the same became so vested in such person or persons, and under what deed or deeds writing or writings.

And that the said defendant may set forth whether the said testator was not at the time of his death seised or entitled in fee-simple of or to some and what real estate, and that he may set forth a full and just rental and particular thereof, and where the same and every part thereof, is situate, and the yearly value of each particular thereof, and in whose tenure and occupation the same and every part thereof is, and under what yearly or other rent or rents, and whether he the said defendant is not, and hath not been for some and how long time past in possession or receipt of the rents and profits thereof or



of some and what part thereof, or who by name now are or is, and for how long time have or hath been in possession and receipt of the rents and profits thereof, and by what right or title and for whose use. And that the said confederate may set forth a full, true, and particular account of all and every sum and sums of money which hath and have been received by him or any other person or persons by his order, or for his use, for or in respect of the rents and profits of the said estate or any part thereof which have become due since the death of the said testator, and when and by whom and for whose use and from whom and for what rent and of <sup>and the rents and profits received by the defendant.</sup> \*what part of the said estates and when due all and every such sums were respectively received. And in particular

[ \*168 ]

That the said defendant may set forth a full true and just rental and particular of the said manor and estate of A. and of every part thereof, and in whose tenure or occupation the same and every part thereof hath been from time to time, and under what yearly and other rent or rents and when due and payable, and also a full true and particular account of all fines which during the same period of time were set or arose or became payable, or were agreed to be paid upon the renewal or renewals of any lease or leases of any estate or estates part of the said manor or estate of A. and of and from whom, and for the renewal of what lease or leases and of what estates or tenements; and also a full true and particular account of all other casual profits which in such time arose or became due or payable for or in respect of such manor and estate, and every or any part thereof, and when and for or in respect of what premises each and every particular arose and became due; and also a full true and particular account of all and every sum and sums of money received by or by the order or for the use of them the said defendants respectively or either of them, for or in respect of the ordinary rents fines quit-rents and other profits of the said manor and estate and every or any part thereof which arose and became due between — and —, and when and from whom and for what all and every such sums were respectively received. <sup>As to the rental of a particular manor, the fines set, and payable upon the renewal of any leases, and as to all casual other profits,</sup>

<sup>and the moneys received in respect thereof.</sup>

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\*9. BILLS TO COMPEL THE DELIVERY OF TITLE-DEEDS.

[ \*169 ]

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LIV. *Bill by a tenant in tail claiming under an old marriage settlement ;(1)—praying to have the possession of certain freehold and copyhold estates delivered up to him, together with all the title-deeds and documents relating thereto. And also to have an account taken of the rents and profits received by the defendants,*

(1) If the title to the possession of deeds and writings which the plaintiff prays may be delivered up, depends on the validity of his title to the property to which they relate, and he is in possession of that property, and the evidence of his title to it is in his own power, or does not depend on the production of such deeds or writings, he must

*who claim under a recovery alleged to have been suffered of the estates in question.*

*The form of the affidavit to be annexed to a bill of this description(2) is added.*

Marriage of plaintiff's great grandfather, who was seised of freehold and copyhold estates.

Settlement made by him previously to his marriage.

[ \*170 ]

His death, leaving three sons; two died without issue; The third left a widow and three sons, one of whom had issue the

Humbly complaining sheweth unto your lordship your orator S. A. of, &c. That W. A. late of, &c. deceased, your orator's late great grandfather, intermarried with one M. W. and being seised in fee simple or otherwise of an estate of inheritance in possession of and in a certain freehold cottage messuage or tenement and — acres of arable land meadow and pasture ground with the gardens orchards and appurtenances thereunto belonging now in the occupation of one T. S., and other freehold messuages lands tenements and hereditaments situate at, &c. and being also seised in fee to him and his heirs according to the custom of the manor of —, of and in a copyhold estate consisting of, &c. now also in the occupation of the said T. S. did previously to such his marriage with the said M. W. and in consideration thereof, by indentures of lease and release or some other deed or deeds instrument or instruments duly executed by him, convey and assure and covenant and agree to surrender to certain trustees therein named, all the said freehold and copyhold estates and premises of him the said W. A. to the use of the said W. A. and M. his wife during their natural lives and the life of the survivor of them, with remainder after the death of such survivor to the first and other sons of the said W. A. and M. his \*wife successively in tail or in tail male, with remainder to the said W. A. in fee. And he the said W. A. did after making such settlement as aforesaid, also surrender the said copyhold estate and premises into the hands of the lord of the said manor, to the uses mentioned and declared in such settlement, As in and by, &c. And your orator further sheweth that after the making of the aforesaid settlement of the said freehold and copyhold estates, the said W. A. and M. his wife departed this life leaving or having had three sons, namely W. A. their eldest son, who died very young and without issue either in the life-time of his father and mother, or soon after their death; J. A. their second son, who had one child only, namely, J. A. who died unmarried and without issue: and T. A. their third son your orator's grandfather, and who departed this life some years

establish his title to the property at law, before he can come into a court of equity for the delivery of the deeds or writings. *Ld. Redesdale's Tr. Pl. 43.*

An heir out of possession is entitled to a discovery of deeds necessary to support his legal title, or to have terms put out of his way which may impede his recovery at law, and the bill should pray the aid of the court, in order that he may assert his legal title; if immediate relief is prayed by the delivery of the possession of the estate and of the title-deeds, the bill may be demurred to; see *Crow v. Tyrrell*, 3 Madd. 179, 181; *Pultney v. Warren*, 6 Ves. 88, 2d edit.; 2 Madd. Ch. Pr. 225, 230.

(2) Where a bill is brought for the discovery of any instrument praying also any relief which might be had at law if the instrument was in the hands of the plaintiff, an affidavit must be annexed to the bill that the instrument is not in his custody or power, and that he knows not where it is, unless it is in the hands of the defendant; and the want of it would be a ground of demurrer. But if the relief sought extends merely to the delivering up of the instrument, or is otherwise such as can only be given in a court of equity, such an affidavit is not necessary; *Ld. Redesdale's Tr. Pl. 112, 113; 1 Madd. Ch. Pr. 26, 7, and 197; Whitechurch v. Golding*, 2 P. Wms. 541.

since, leaving S. A. his widow and three sons, namely, T. A. W. A. and E. A. and which last named T. A. who was your orator's father, left two sons, namely, T. his eldest son, who is since dead without issue, and your orator; so that your orator has now become the heir-general and heir in tail of his said great grandfather the said first-named W. A. and as such is as he is advised and humbly insists, become entitled under and by virtue of the said indentures or indenture of settlement or otherwise to all the freehold and copyhold estates and premises before mentioned, as tenant in tail thereof in possession, with remainder to himself in fee. And your orator well hoped that he should accordingly have been let into the possession thereof, and have been permitted to hold and enjoy the same and receive the rents and profits thereof. BUT NOW SO IT IS may it please your lordship that S. A. the widow of the said T. A. your orator's grandfather, and W. A. of, &c. your orator's uncle, combining, &c. [see form IV. p. 5.] And the said defendants or one of them have or hath got into the possession or receipt of the rents and profits of all the said freehold and copyhold estates and premises, and also have or hath got into their his or her hands custody or power the said indentures or indenture or other deeds or deed of settlement, and also all the title-deeds muniments and writings surrenders or admissions belonging or relating to the said freehold and copyhold estates and premises, and to the custody or possession whereof your orator is justly entitled. And they pretend that no such settlement as above mentioned, or any other settlement, was ever made or agreed to be made by the said W. A. your orator's great grandfather, of the said freehold and copyhold estates or any part thereof. Whereas your orator charges the contrary thereof to be the truth. And that the said confederates or one of them now have or hath in their his or her custody or power the said deeds or deed of settlement, and all the title-deeds muniments and writings surrenders and admissions belonging and relating to the said freehold and copyhold estates and premises, whereby it appears as the fact is, that the said estates were settled in strict settlement or otherwise in such manner as that your orator is now justly entitled thereto as heir general or heir in tail. And your orator further charges, that if the said defendants have not the same now in their custody or power, they or one of them have or hath heard of or \*seen the same, and they or one of them have or hath lately had the same, and have or hath burnt or otherwise destroyed the same, or know where the same are or is or what is become thereof, or they or one of them have or hath had in their his or her custody or power some counterpart or copy abstract or extract of the said deeds or deed of settlement or some memorandum thereof, or some document paper or writing wherein the same is recited referred to mentioned or taken notice of, and whereby if the same were produced the truth of the matters hereinbefore charged would appear; and at other times they the said confederates pretend that your orator hath no right or title whatsoever to the said freehold and copyhold premises or any part thereof, notwithstanding the aforesaid settlement, for that as they pretend the said W. A. your orator's great grandfather

plaintiff, and another son since dead.

Plaintiff entitled as heir general or heir in tail of his great grandfather.

Defendants in possession of the estates and title-deeds.

Pretence that no settlement was ever made.

Charge the contrary, and that the defendants have all the deeds, &c., from which it appears that plaintiff is entitled as heir general or in tail.

[ \*171 ]

Pretence that plaintiff has no title by reason of a recovery suffered by his great

grandfather, and of a will made by him, also by reason of a recovery suffered by his grandfather, under which defendant S. A. is entitled for her life, with remainder to her son in fee.

Charge the contrary, and that plaintiff is entitled.

Pretence that defendant W. A. is entitled under some deed executed by plaintiff's father.

[ \*172 ]  
Charge the contrary.

Admission made by defendant W. A. that plaintiff is entitled, and a proposal made to him to give up his right and join in a conveyance to a purchaser.  
Refusal by de-

was tenant in tail of the said freehold and copyhold estates under and by virtue of the said settlement, and had a right to suffer and did duly suffer a recovery of the said freehold premises at common law, and also suffered a recovery of the said copyhold premises in the manor court according to the custom of the said manor of —, and afterwards duly made and published his last will and testament in writing, and devised the said freehold and copyhold estates to his son T. A. your orator's grandfather in tail; and that your orator's said grandfather duly suffered a recovery of the said premises, and declared the uses of the said recovery to himself the said T. A. for his life, remainder to the said S. A. his wife for her life, with remainder to the younger child of the said T. A. and S. his wife, who should be living at the death of the survivor of them the said T. A. and S. his wife, and to his or her heirs and assigns and that under and by virtue of the uses of such recovery, they the said confederates insist, that she the said S. A. is entitled for her life, and that he the said W. A. will become entitled upon the death of his mother the said S. A. to the fee and inheritance of and in the said freehold and copyhold estates and premises. Whereas your orator charges the contrary of such pretences to be the truth. And that the said W. A. your orator's said late great grandfather never did, nor did the said T. A. your orator's grandfather ever effectually suffer any recovery of the said estates or any part thereof, or if they or either of them ever did suffer a valid recovery of the said estates (which your orator does not admit) they or he never did make any effectual and valid disposition thereof by will or otherwise, and that therefore the said freehold and copyhold estates descended to and are now vested in your orator in manner aforesaid; But the said defendant W. A. sometimes pretends and insists that he is entitled to the said freehold estate and premises under and by virtue of some indentures of lease and release or other deeds or deed executed by the said T. A. your orator's father in his life-time, whereby he the said T. A. did as the said confederate pretends, convey to him and his heirs the said freehold estate and premises, or that he is in some other manner entitled thereto; but he the said confederate refuses to produce or show to your orator such pretended indentures of lease and release, or other deeds or deed of conveyance from your orator's said father. Whereas your \*orator charges that your orator's said late father never did execute any indentures of lease and release or other deeds or deed whereby he conveyed such freehold estate and premises or any part thereof to him the said defendant W. A. or any other person. And at other times the said defendant W. A. admits and hath frequently declared that your orator is entitled to the fee and inheritance of and in the said freehold and copyhold estates and premises under and by virtue of the said indentures or indenture of settlement, and all the title-deeds muniments and writings belonging and relating to the said freehold and copyhold estates and premises, and hath proposed to give some sum of money or consideration to your orator if he would give up his right to the said estates and premises, or join in a conveyance thereof to a purchaser. But nevertheless they refuse to deliver up the said estates and the said

title-deeds and writings to your orator, or to suffer him to peruse and inspect the same, or take copies or abstracts thereof; and having got into their custody the said settlement and surrender made by your orator's said great grandfather whereby the legal estate in the said premises was vested in and is now outstanding in the trustees named therein, and also having got into their hands all the other title-deeds muniments surrenders and admissions relating to the said freehold and copyhold estates, they not only refuse to let your orator into possession of the said estates, or to account with him for the rents and profits thereof received by them respectively, or to deliver unto your orator the said settlement title-deeds muniments surrenders and admissions, but also threaten, that if your orator should bring an ejectment to recover the possession of the said estates, they will set up some old mortgage term or the said settlement made by the said W. A. your orator's said great grandfather or some other concealed deed or instrument, and thereby defeat your orator of his remedy at law. All which actings, &c. [see form VI. p. 5, *interrogating to the stating and charging parts.*]

defendants to deliver up the estates and title-deeds, and they threaten to set up some old term or deed to defeat plaintiff of his remedy at law.

And that the said S. A. and W. A. may be decreed to deliver up to your orator the possession of the freehold and copyhold estates and premises above-mentioned, free from all incumbrances done by them or either of them, and also the said indentures or indenture or other deeds or deed of settlement executed by the said W. A. your orator's said great-grandfather, and all other title-deeds muniments and writings surrenders and admissions belonging or relating to the said freehold and copyhold estates and premises in the custody or power of them respectively. And that they may be also decreed to come to a just and fair account with your orator for, and to pay to him all the rents and profits of the said freehold and copyhold estates and premises which have been received by them or either of them or any other person or persons by their or either of their order or for their or either of their use, or which without their wilful neglect or default they might have received. [And for further relief, see form VIII. p. 5.] May it please, &c. [see form No. 1, p. 6.] J. H.

Prayer.

\*In Chancery.

[ \*173 ]

Between S. A. . . . . Plaintiff,  
and

S. A. and W. A. Defendants.

S. A. the plaintiff in this cause maketh oath and saith, that he this deponent hath not, nor to the best of his knowledge remembrance or belief ever had all or any of the deeds evidences and writings relating to the estate in question in this cause, and which are mentioned in this deponent's bill exhibited in this honorable court against the said defendants, nor doth this deponent know where the said deeds evidences and writings or any of them now are, unless they be in the custody or power of the said defendants S. A. and W. A. or one of them.

Affidavit to accompany the bill.

*\*LV. Bill by a devisee of a freehold estate against the widow of the testator, and a solicitor who had got the title-deeds into his possession,(3)—praying to have the title-deeds delivered up, and for an injunction to restrain the widow from proceeding in a writ of dower.(4)*

To, &c.

Will of the  
testator.

His death.

Probate by  
the executor  
who took pos-  
session of all  
the title-  
deeds.

[ \*174 ]  
And after-  
wards deliver-  
ed them to the  
defendant J.  
L. to be deliver-  
ed to plain-  
tiff.

Application to  
J. L. to deliver  
up the  
deeds.

Humbly complaining sheweth unto your lordship your oratrix E. C. of, &c. spinster, That W. R. of, &c. gent. deceased being in his life-time and at the time of his decease seised of or interested in or otherwise well entitled unto the hereditaments, hereinafter mentioned, he the said W. R. when he was of sound mind and understanding duly made and published his last will and testament in writing bearing date on or about —, and executed and attested in such manner as by law is required for devising real estates, and thereby, (amongst other things) gave and devised unto your oratrix her heirs and assigns forever, all that, &c. [*describing the premises*] but his mind was, and he did thereby will and direct that your oratrix her heirs or assigns should out of the said premises pay unto her father W. C. one annuity or clear yearly rent-charge or sum of £10 during his life; and the said testator thereby appointed J. B. the elder sole executor of the said will. As in and by the said will reference being thereunto had will more fully appear. And your oratrix further sheweth that the said W. R. the testator departed this life on or about — without having revoked or altered his said will, and upon or soon after his decease the said J. B. the elder duly proved the said will in the proper Ecclesiastical Court; and he the said J. B. the elder (amongst other things) possessed himself of or got into his custody or power all the title-deeds evidences \*and writings belonging or relating to the said premises so devised to your oratrix as aforesaid. And your oratrix further sheweth that within some short time afterwards the said J. B. delivered over to or deposited in the hands of or entrusted to the care of Mr. J. L. of — an attorney at law, all or some parts of the said title-deeds evidences and writings so belonging or relating to the said devised premises, in order that the same might be delivered by him the said J. L. unto your oratrix as the devisee of the said premises, and which he the said J. L. ought accordingly to have done. And your oratrix hath by herself and her agents as well personally as by letter and otherwise, oftentimes applied to the said J. L. and requested of him to deliver to your oratrix or to her order the said deeds evidences and writings. BUT NOW SO IT IS may it please your lordship that the said J. L. combining and confederating with the said S. R. the widow of the said testator, and with divers other persons, &c.

(3) See *Anon.* 1 Ves. junior's Rep. 29, 2d ed. in which case the Lord Chancellor refused an application by a devisee to have deeds delivered up, the heir at law not being before the Court; see also *Lewis v. Nangle*, 2 Ves. sen. 430; S. C. Amb. 150.

(4) That an affidavit is unnecessary in this case, vide *antea*, u. (2), page 169.

[see form VI. p. 5,] he the said J. L. refuses to deliver the said title-deeds evidences and writings unto your oratrix, pretending that the said deeds evidences and writings were so delivered to him for the benefit of the said confederate S. R. And she the said S. R. pretends and gives out that she is entitled to her dower or thirds out of the said estate so devised to your oratrix, and she has lately brought her writ of dower in order to recover her dower or thirds out of the said real estate so devised to your orator, and is proceeding in her said writ of dower in order to obtain judgment therein, and to have possession of one-third part of the said premises so devised to your oratrix assigned or allotted to her. And the said confederates refuse to produce or to deliver to your oratrix the deeds and writings relating to such estate so devised to your oratrix, so that your oratrix is unable to discover whether the said testator was seised of legal estate in fee-simple of and in the estate so devised to your oratrix. And your oratrix further charges that the said confederate S. R. ought not to be permitted to proceed in the said writ of dower until after that she shall have delivered all deeds evidences and writings in her custody or power relating to the said estate or devised to your oratrix. And your oratrix further charges that the said testator was seised of a real estate not exceeding £120 a-year, including the said estate so devised to your oratrix if the same is a real estate, and that the said testator by his said will devised to the said S. R. his widow in fee simple a freehold estate of the yearly value of £40 or some such yearly value, and also gave to his said widow very considerable legacies and annuities, and declared that the devises and bequests so made to or in favor of her were to be in lieu of her dower, and of all other demands which she might have on his real and personal estates.(5) And your oratrix further charges that the said testator meant and intended that your oratrix should enjoy the estate devised or bequeathed to her without any claim or demand to be made thereon by his said widow; and that the said confederate S. R. ought to be restrained from proceeding at law in the said writ of dower \*and ought to be compelled to abide by the devises and bequests made to her by the said will, and ought not to act contrary or in opposition to such will; And the said confederates ought to be compelled to deliver up to your oratrix all the deeds evidences and writings relating to the estates so devised to her as aforesaid. All which actings and doings of the said confederates are contrary to equity and good conscience, and manifestly tend to the injury of your oratrix. IN CONSIDERATION whereof and forasmuch as your oratrix is remediless in the premises at the common law by reason of the strict rules thereof, and cannot have a discovery or production of the said deeds evidences and writings without the aid and assistance of a court of equity, where matters of this nature are properly cognizable. To THE END therefore that, &c. [*proceed as in form VI. p. 5, interrogating to the stating and charging parts.*]

And that the said defendants may be compelled to deliver up unto your oratrix upon oath all deeds evidences writings belonging or re-

Refusal.

Pretence that the deeds were delivered to him for the benefit of the widow who claims to be entitled to her dower, and has brought her writ of dower.

Refusal to produce the deeds.

Plaintiff unable to discover whether the testator was seised of the legal estate.

Charge that the widow ought not to proceed in her writ of dower until she has delivered up all deeds, &c.

That the testator was seised of a real estate not exceeding 120*l.* a year.

That he devised an estate worth 40*l.* a

[\*175]

year to his widow and other property, and declared the same to be in satisfaction of her dower.

That he intended plaintiff should enjoy the estate devised to her without any claim by his widow, who ought to be restrained from proceeding at law.

Prayer.

lating to the said lands and premises so given by the said testator's will to your oratrix; and that the said defendant S. R. may be restrained by the injunction of this honorable court from proceeding at law against your oratrix in the said writ of dower, or otherwise touching the matters hereinbefore mentioned. [And for further relief, see form VIII. p. 5.] May it please, &c. [see forms No. 1, and 4, p. 6.] A. J.

*Pray subpoena against J. L. and S. R.  
and injunction against S. R.*

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### 10. BILL FOR DOWER.

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\*LVI. *Bill by a widow against the heir at law of her deceased husband and his other children, and also against his executors and devisees in trust;—Praying that she may be declared entitled to her dower, and to an annuity given to her by her husband's will;—also to have an account taken of his real estates, for a commission to assign to her her dower, and for an account and payment of one-third of the rents accrued due since her husband's death;—The defendants insisting that the plaintiff is not entitled to her dower and also to the annuity, but ought to elect.*(1)

*Another form of prayer adapted to the same bill is subjoined, in which compensation is prayed for the value of the plaintiff's dower out of such part of the estates as was directed by the will to be sold in her life-time.*<sup>d</sup>

[ \*176 ] Humbly complaining sheweth unto your lordship your oratrix E. H. of, &c. the widow and relict of R. H. of, &c. deceased, That \*the

(1) The rule in equity seems to be, that a widow cannot be put to an election to take under the will of her husband or her dower, except by express declaration, or necessary inference from the inconsistency of her claim with the dispositions of the will. The claim under the will and of dower must be repugnant, and it must be clearly shown that if the widow claim her dower it would disappoint the will. See 2 Madd. Ch. Pr. 57; *Chalmers v. Storil*, 2 Ves. & B. 122; *Dickson v. Robinson*, Jac. R. 503; *Miall v. Brain*, 4 Madd. 119; *Butcher v. Kemp*, 5 Madd. 61; *Roberts v. Smith*, 1 Sim. & Stu. 513.

A widow is *prima facie* entitled to an account from the time her title accrues; and it rests upon the defendant to show some special ground to limit the account; see *Oliver v. Richardson*, 9 Ves. 222, 2d edit.; in which case the decree directed the account to be taken for the whole period of twelve years from the death of the husband.

Where a widow files a bill for the single purpose of having dower assigned her, costs do not follow the suit; but where in bills for dower separate questions of title arise, and are conducted vexatiously; or where the widow has without any just pretence been vexatiously kept out of her dower, she will be allowed her costs. See Madd. Ch. Pr. vol. i. p. 243; vol. ii. p. 57, 564; *Worgan v. Ryder*, 1 Ves. & B. 20.

<sup>d</sup> The remedy for dower is *prima facie* at law; but where the title is admitted, and there are obstacles in the way of proceeding at law, chancery will entertain a suit for dower, and for mesne profits, since the husband's death; the concurrent jurisdiction of chancery is exercised especially in cases where partition, discovery, or account is prayed for. *Swaine v. Perrine*, 5 Johns. C. R. 482; *Herbert v. Wren*, 7 Cranch, 370; *Kiddall v. Trimble*, 1 Md. Ch. De. 143; *Badgley v. Bruce*, 4 Paige, C. R. 98; *Hartshorne*



said R. H. was in his life-time and at the time of his death, and also at the time of making his said will hereinafter stated, seised or entitled in fee-simple in possession of or to divers messuages lands and hereditaments situate in R. aforesaid or elsewhere in the county of C. and being so seised or entitled he the said R. H. when of sound mind memory and understanding duly made and published his last will and testament in writing bearing date, &c. which was executed by him and attested and published in such manner as by law is required in devises of real estates, and thereby gave and devised unto his son-in-law T. T. of, &c. and W. W. of, &c. and to the survivor of them and to the heirs executors and administrators of such survivor, all that his messuage, &c. upon trust to sell, &c. and at the decease of his then wife your oratrix, he the said testator gave and devised all other, his messuages, &c. to his said trustees to be sold in manner thereinbefore limited and appointed respecting his other estates; and the said testator gave and bequeathed unto your oratrix during her life the annual or yearly sum of £5 to be paid to her out of the rents arising from the said messuages, &c.; and the said testator gave and bequeathed all the moneys arising from the said sales after payment thereof of his debts funeral expenses and the charges of the probate and execution thereof, and all other his worldly estate not otherwise therein before bequeathed, to be equally divided amongst his children, their executors and administrators share and share alike (except his son R. who was therein mentioned to have been otherwise provided for;) and the said testator thereby appointed the said T. T. and W. W. to be executors of that his will. As by, &c.

Testator  
seised of free-  
hold estates.

His will.

That the said testator departed this life on or about — without altering or revoking his said will leaving your oratrix his widow, J. H. of, &c. his eldest son and heir at law, John H. W. H. and M. H. all of, &c. and M. T. the wife of the said T. T. his only other children him surviving; and upon or soon after the said testator's death the said T. T. and W. W. duly proved his said will in the proper Ecclesiastical Court and undertook the executorship thereof, and they or one of them as such devisees in trust as aforesaid entered into the possession or receipt of the rents and profits of all the said testator's freehold estates, and have or hath ever since been and now are or is in the possession or receipt of the rents and profits thereof. That under or by virtue of the said will your oratrix is entitled to an annuity or annual sum of £5 to be paid to her during her life out of such part of the said testator's estate as is devised by his

Death of the  
testator leav-  
ing a widow  
and five chil-  
dren.

Probate of his  
will by the  
executors,  
who entered  
upon the free-  
hold estates,  
and still con-  
tinue in the  
possession  
thereof.

That under  
the will plain-  
tiff is entitled

*v. Hartshorne*, 1 Green, Ch. 349; *Wells v. Beal*, 2 Gill & J. 468. But equity treats dower as strictly a legal right, and is governed by the same rules of right with courts of common law, and will not permit an equity to be interposed to defeat the dower. Where, however, the widow applies for equitable relief in relation to dower, which a court of law cannot grant, she cannot resist an equitable defence, as against a purchaser for a valuable consideration, who is ignorant of her claim of dower. *Blain v. Harrison*, 11 Ill. 384. The wife of a mortgagor can enforce her claim of dower of an equity against the mortgagee, and those claiming under him, only by bill in equity. *Smith v. Eustis*, 7 Greenl. 41. Where a statute requires a demand for dower, the bill must allege it. *Wells v. Sprague*, 10 Ind. 305. Separate holders of different tracts, aliened by the husband during coverture, may be joined as defendants in one bill. *Boyd v. Lancaster*, 2 P. & H. (Va.) 198.

to an annuity during her life. And no settlement having been made in lieu of dower, plaintiff is also entitled to her dower out of the freehold estates.

Applications.

Pretence that the executors have not received any rents, or that they have accounted for a third part thereof.

But admitting the contrary they refuse to set forth a rental of the real estates, and to account for the rents.

They and the other defendants also pretend, that plaintiff is not entitled to the annuity and her dower, but ought to elect.

Charge the contrary.

That according to the true

[ \*178 ]

\*said will and charged with the payment thereof; and that no settlement or provision in lieu of dower having been made upon or for the benefit of your oratrix upon or before her marriage with the said testator, your oratrix upon the death of her said late husband also became and now is entitled, over and beside the said annuity, to dower in or out of all the said testator's freehold estates of which he was seised in fee at the time of his death, or at any time during their coverture, and particularly those which are by his said will devised and directed to be sold as aforesaid, but no sum of money hath been paid or satisfied to your oratrix either on account of the said annuity or of her said dower; and your oratrix being entitled in manner aforesaid, hath frequently by herself and her agents applied in a friendly manner to the said T. T. and W. W. and requested them to account with her and pay to her the arrears of her said annuity, and also the amount of one-third part of the net income proceeds rents and profits of the said freehold estates accrued due since the said testator's decease, and received by them or either of them; and to let your oratrix into the possession of one-third part of the rents and profits of the said freehold estates and premises; and to assign and set out for your oratrix a full third part of the said freehold estates as and for her dower therein; and your oratrix well hoped that such her reasonable requests would have been complied with, as in justice and equity they ought. BUT NOW SO IT IS, &c. [see form IV. p. 5.] the said T. T. and W. W. sometimes pretend that they have not received any rents and profits of the said real estates late of the said testator or any part thereof, or if they have received any of such rents, that they have accounted with your oratrix for and paid to her a full third part thereof in lieu of satisfaction of her dower, the contrary of which they at other times admit to be true. But they nevertheless refuse to set forth a rental and particular of the said real estates, and also to set forth a full and just account of all the rents and profits of all the said real estates accrued due since the said testator's decease, as they ought to do; and they and the said other confederates who claim to be interested in the said freehold estates under the said testator's will, sometimes pretend(2) that according to the true meaning and construction of the said will and the intention of the said testator therein, your oratrix is not entitled to both the said annuity of £5 and her dower in and out of the said testator's freehold estates; and that she ought to make her election either to take her dower only, or to accept the said annuity of £5 in lieu and bar thereof. Whereas your oratrix charges the contrary of such pretences, and that according to the true meaning and proper construction of the said will and the intention of the said testator apparent therein, your oratrix is entitled as well to her dower in the said freehold estates of her said late husband by common law, as to the said annuity of £5 by virtue of the said will; for your oratrix charges that it is not expressed in the said will, nor can or ought to be inferred or implied \*from any thing contained therein; that the said testator meant to

(2) Vide antea, p. 174; et postea, p. 189.

exclude your oratrix from her right to dower out of his freehold estates, or that she should take the said annuity of £5 in lieu of or satisfaction for such dower; and as evidence that the said testator could not so mean or intend, your oratrix charges that such annuity is considerably less than the annual value of your oratrix's dower in the said freehold estates. And your oratrix charges that her said claims are by no means repugnant to or inconsistent with, nor will in any manner disappoint any gifts or bequests contained in the said will; and therefore your oratrix humbly submits that she ought not to be put to her election either to take her said dower only, or to accept the said annuity of £5 given to her by the said will in lieu thereof; but the said confederates insist on the contrary, and under such or the like pretences as aforesaid or some others equally unjust and unreasonable, the said T. T. and W. W. refuse to comply with your oratrix's aforesaid requests; and your oratrix not knowing the particular description of the said freehold estates and premises, and being unable to discover the same by reason of the title-deeds and writings relating thereto being in the possession of the said defendants, is unable to proceed with effect at law to recover her dower out of the said estates; and the said T. T. and W. W. also threaten and intend in case your oratrix shall proceed at law for this purpose, they will set up some term or other estate or interest in the said estates by virtue of some deeds or deed in their custody or possession which will effectually defeat your oratrix's proceedings at law; and sometimes the said J. H. (*the heir*) alleges that the said R. H. his late father never made any such or the like will as aforesaid, or if he did, the same was not duly executed and attested so as to pass real estates, or that he was not of sound and disposing mind memory and understanding at the time of making the same; and that therefore on his death all his said freehold estates descended to him the said J. H. as his heir at law; And that he is accordingly seised thereof in fee-simple, not subject to the payment of any such annuity to your oratrix. Whereas your oratrix charges the contrary of such pretences to be the truth. All which actings, &c. [*see form VI. p. 5, interrogating to the stating and charging parts.*]

And that the said T. T. and W. W. may set forth a full true and just rental and particular of all the freehold estates messuages lands and hereditaments whatsoever, which the said testator was seised of or entitled unto in possession in his life-time and at the time of his death, and where the same and each and every part thereof are situate, and in whose custody possession or power the same have been during each and every part of the time since the death of the said testator, and at what yearly or other rents or rent; And that they the said last-named defendants may also set forth a full and particular account of all and every the sums and sum of money which have or hath been received by the order or for the use of them or either and which of them, on account of the rents and profits of the said freehold estates messuages or tenements and premises which have accrued due since the said testator's death; And \*when and from whom and for what rent and of what part of the said premises and when due the same were respectively received.

construction of the will, plaintiff is entitled to the annuity, and also to her dower.

That the annuity is of much less value than her dower.

Plaintiff's claims not repugnant to the will.

But the defendants refuse to comply with plaintiff's requests.

The title-deeds being in defendants' possession, plaintiff unable to proceed at law.

Defendants threaten to set up an outstanding term.

The heir at law disputes the will, and pretends that the freehold estates descended to him.

Charge the contrary.

Interrogatory for a discovery of the testator's estates, and the rental thereof;

And of the moneys received on account of the rents since the testator's death.

Prayer.

And that the aforesaid will of the said testator R. H. may be established; and that your oratrix may be declared by the decree of this honorable court to be entitled as well to her dower out of the freehold estates or estate and premises of which her said late husband died seised as to the said annuity of £5 given to her by his said will; and that the said annuity may be ordered to be paid to her accordingly, and an account taken of what is due to her in that behalf. And that an account may be taken of the real estates or estate of which the said testator was seised at the time of his death; and that your oratrix may be let into the possession and receipt of the rents and profits of one-third part thereof, and may be declared to be entitled to hold and enjoy the same for her life as and for her dower. And (if necessary) that a commission may issue for the purpose of assigning and setting out such dower or third part of the said real estates or estate, so that your oratrix may hold and enjoy the same in severalty as and for her dower. And that an account may be taken of the rents and profits of the said freehold or real estates received by or by the order or for the use of the said T. T. and W. W. which have accrued due since your oratrix's late husband's decease, and that they may pay unto your oratrix a full third part thereof, and whatsoever may hereafter become due from them in that behalf. [*And for further relief, see form VIII. p. 5.*] May it please, &c. [*see form No. 1, p. 6.*]

*Another form of prayer adapted to the above bill, praying compensation for the value of the plaintiff's dower out of such part of the estates as was directed to be sold in her life time :—*

Prayer.

And that your oratrix may be declared by the decree of this honorable court to be entitled as well to her dower out of the freehold estates of which her said late husband died seised, or a full and adequate compensation in lieu thereof, as to the said annuity of £5 given to her by his said will; and that the said annuity may be ordered to be paid to her accordingly, and an account taken of what is due to her in that behalf. And that a commission may issue out of this honorable court for the purpose of assigning and setting out a competent part of the above-mentioned estates (except as to the part thereof by the said will directed to be sold in your oratrix's life-time) by metes and bounds, so that your oratrix may hold and enjoy the same in severalty as and for her dower; and that a compensation may be made to your oratrix for the value of her dower out of the said premises directed to be sold before your oratrix's decease; and that the amount of such compensation may be ascertained in such manner as this honorable court shall think proper. And that an account may be taken of the rents and profits of the said freehold or real estates received by or by the order or for the use of the said T. T. and W. W. which have accrued due since your oratrix's late husband's decease; and that they may pay unto your oratrix a full third part thereof, and whatsoever \*may hereafter become due from them in that behalf. [*And for further relief.*]

*LVII. Charges in a bill brought by a widow for her dower—the defendants alleging that a sum due on the testator's bond, which they had paid to her, was intended to be discharged by the bequest of a legacy and an annuity to her by his will; that his debts and legacies were not charged on his real estate; and that an annuity given to her by his will was intended to be in full satisfaction of her dower and that she ought to elect with regard thereto.*(3)

And your oratrix further sheweth that in the year—— the said defendants T. P. and W. P. paid to your oratrix the said sum of £—— secured by the said bond, but as to the said legacy and her said annuity they under various pretences decline to pay the same, and pretend that the said sum of £—— in or by the said bond or obligation made payable to your oratrix was by the said testator intended to be satisfied and discharged by the said legacy of £—— bequeathed to her by the said will as well as by the said annuity of £—— per annum therein devised to your oratrix and that the said defendants having satisfied and paid such sum of £——, your oratrix is entitled to no further benefit under the said will. Whereas your oratrix charges and humbly insists that she is entitled to both the said legacy and the said annuity of £——. And the said defendants insist that your oratrix is not entitled to dower out of the real estates of the said testator, but that the said annuity of £—— per annum given and bequeathed to your oratrix was by the said testator intended to go in satisfaction of your oratrix's dower or thirds at common law of the whole real estate of the said testator, and that your oratrix ought to be put to her election whether she will abide by the said annuity of £—— per annum, or insist on her dower of the said testator's real estate, but that she ought not to be permitted to enjoy the said annuity and her said dower at one and the same time. Whereas your oratrix insists that the said annuity of £—— per annum is by no means an equivalent in point of value to your oratrix's dower of all the real estates of the said testator, and that the said annuity is merely and only charged on that part of the real estate of the said testator which by his will is devised and given to the said defendant T. P. And the said defendants insist that supposing that the said testator did make such will as stated in the said bill, yet the said testator did not thereby charge his real estate with the payment of his debts and legacies, but merely and only with the said two annuities. Whereas your oratrix charges that the said testator being the absolute proprietor of his real and personal estates, and having by his said will directed and ordered that all the \*legal debts legacies and funeral expenses should be in the first place paid and discharged, amounts to a charge of all his said debts upon his real estates; and in case it should appear that the personal estate of the said testator is not sufficient to satisfy his debts and legacies, which your oratrix in no sort admits, then and in that case the real

That defendants paid the money due on the bond, and pretend that the same was intended to be discharged by a legacy and an annuity bequeathed to her.

Charge that she is entitled to both.

Defendants insist that she is not entitled to dower, but that an annuity bequeathed to her was intended to be in satisfaction thereof, and that she ought to be put to her election.

Charge that the annuity is not equivalent to her dower, and is only charged on an estate devised to T. P.

Defendants insist that the testator did not charge his real estate with the pay-

[ \*181 ]

ment of his debts and legacies, but only with two annuities.

Charge that the direction that the debts, &c., should be paid in the first place amounts to a charge on the real estate; and that in case the personal estate is insufficient, the real estate ought to be sold, subject to the annuity and the plaintiff's dower.

That T. P. ought to pay the arrears and growing payments of the annuity. That the defendants ought to pay plaintiff her dower, and that her right thereto, and to the annuity, ought to be established.

estate of the said testator, or so much thereof as shall be sufficient, ought to be sold and disposed of, and that out of the money to arise from such sale your oratrix's legacy of £—— ought to be paid, and that such estate ought to be sold and disposed of subject to the said annuity of £—— per annum, as well as to her dower or thirds of the real estate of the said testator, and the said defendant T. P. ought to pay to your oratrix the arrears as well as the future growing payments of the said annuity of £—— per annum, charged on the real estate so devised to him; and the said defendant ought likewise to be compelled to pay to your oratrix her dower or thirds at common law out of and in respect of all the real estates of the said testator; and that your oratrix's title as well to her dower as to the said annuity of £—— per annum ought to be established and declared by the decree of this honorable court.

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## 11. BILLS OF FORECLOSURE.(1)\*

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\*LVIII. *Bill by a mortgagee for a term of years for a foreclosure, against the surviving mortgagor, entitled as surviving devisee to the equity of redemption, as to one moiety for his own benefit, and as to the other in trust for himself and another individual (also a defendant) as devisees under another will.*

In Chancery.

To, &c.

Humbly complaining sheweth unto your lordship your orator A. H. of, &c. esq. That J. S. C. now deceased, S. M. C. of, &c. (one

(1) A person entitled to a part only of a sum of money secured on mortgage, cannot file a bill for a foreclosure, without making the other persons entitled to the residue, parties; *Lowe v. Morgan*, 1 Bro. Ch. n. a, 368; *Palmer v. The Earl of Carlisle*, 1 Sim. & Stu. 423, S. P., in which case the bill was dismissed with costs as against the mortgagor; and see *Montgomery v. The Marquis of Bath*, 3 Ves. 560, 2d edit.

Where an advowson is mortgaged, the mortgagee, instead of bringing a bill of foreclosure, should pray a sale of the advowson; *Mackenzie v. Robinson*, 3 Atk. 559.

Annuitants prior to a mortgage need not be made parties to a bill by the mortgagee against the mortgagor for a sale, but the estate must be sold subject to the annuities; had they been subsequent to the mortgage they would have been proper, although not necessary parties, *Delabere v. Norwood*, 3 Swanst. 144, n.

A bill of foreclosure may be filed against the assignees of a bankrupt mortgagor before the execution of the bargain and sale to them; *Bainbridge v. Pinhorn*, Buck's Rep. 135; *Lloyd v. Lander*, 5 Madd. 290; if a bankrupt mortgagor is made a party, he may demur; *Lloyd v. Lander*.

The executor of the mortgagee is a necessary party to a bill of foreclosure by the heir of the mortgagee; *Freak v. Horsley*, 2 Freem. 180; Nels. 93, 1 Ch. Ca. 51; but the personal representative of the mortgagor is not a necessary party to a bill of foreclosure of freehold hereditaments, whether the mortgage was in fee or by demise; *Fell v. Brown*, 2 Bro. Ch. Ca. 278; *Bradshaw v. Outram*, 13 Ves. 234; and note (A)

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\* The bill need not aver title in the mortgagor; *Shed v. Garfield*, 5 Verm. 39; and a decree of foreclosure will not be made against a defendant who claims under a title

\*of the defendants hereto) and the Rev. P. K. now deceased, being or alleging themselves to be seised of and entitled to the heredita-

3 P. Wms. 333; if one mortgage is made of freehold and leasehold estates and the mortgagor dies, his heir and executor must be made parties; Harr. Ch. Pr. 30.

For cases of bills of foreclosure filed against infants, see *Booth v. Rich*, 1 Vern. 295; *Goodier v. Ashton*, 18 Ves. 83, 2d edit.; *Mondey v. Mondey*, 1 Ves. & Bea. 223, and 1 Madd. Ch. Pr. 532.

With regard to making all incumbrancers parties, see *Bishop of Winchester v. Beaver*, 3 Ves. 314, 5, 2d edit. and the cases there referred to. Incumbrancers become such after a bill filed or after an abatement are not necessary parties, because they take subject to the effect of the suit; *Bishop of Winchester v. Paine*, 11 Ves. 197. A judgment creditor prior to a mortgage, need not make the subsequent mortgagee a party in order to postpone him, as the judgment has a legal priority; *Shepherd v. Gwinnett*, 3 Swanst. 151, n.

Where A. made a mortgage to B. for a term of years for securing 350*l.*, and B. assigned the term to C. for securing 300*l.*, on a bill of foreclosure by C. against A., B. or his representative was held to be a necessary party; *Hobart v. Abbot*, 2 P. Wms. 643; and see also *Norrish v. Marshall*, 5 Madd. 478, 9.

To a bill of foreclosure against the principal mortgagor, the mortgagor of another estate as a collateral security is a necessary party; *Stokes v. Clendon*, 3 Swanst. 150, n.; S. C. 2 Bro. Ch. Ca. 275, n.

A mortgagee can never make a mortgagor, or his assignee if he become bankrupt, account for the rents for the time past, even after notice given to the tenants to pay the rents to the mortgagee; *Ex parte Wilson*, 2 Ves. & Bea. 253; and see also *Gresley v. Adderley*, 1 Swanst. 579; *Moss v. Gallimore*, Dougl. 266.

A mortgagee may pray a sale of the mortgaged premises in the first instance, where the same person is the heir and also personal representative of the mortgagor, and the personal estate is clearly deficient; *Daniel v. Skipwith*, 2 Bro. Ch. Ca. 155.

older than that of the mortgagor, and adverse to it. *Lyman v. Little*, 15 Verm. 576. It is held in Connecticut, that a mortgagor who has conveyed to another his equity of redemption, and has no longer any interest in the subject, should not be made a party to the bill; *Swift v. Edson*, 5 Conn. 531; although he is held in New Jersey to be a proper though not a necessary party. *Chester v. King*, 1 Green, Ch. 405; *Vreeland v. Loubat*, Ib. 104. If the mortgagee be deceased, the bill should be brought in the name of the executor or administrator, and not of the heirs. *Roath v. Smith*, 5 Conn. 133. If the mortgagee has assigned absolutely, and divested himself of all interest, he need not be made a party; *Whitney v. McKenney*, 7 Johns. C. R. 144; but in *McIver v. Cherry*, 8 Humph. 713, it is held, that the heirs of a deceased mortgagor and mortgagee must both be made parties. See also, *Osborne v. Tunis*, 1 Dutch. 633. All incumbrancers at the time of filing the bill should be made parties, or they will not be bound by the decree. *Haines v. Beach*, 3 Johns. C. R. 459; *Ens-worth v. Lambert*, 4 Id. 605; *Cullum v. Batre*, 2 Ala. 415; *Finley v. Bank of United States*, 11 Wheat. 304; *McCall v. Yard*, 1 Stockton, 358. In New York, it seems that the plaintiff must state in his bill that no proceedings at law have been had to recover the debt, or if there have been such proceedings, he must state the nature of them, and that they have been discontinued, or that the remedy at law has been exhausted; *Pattison v. Powers*, 4 Paige, C. R. 549; 9 Id. 137; 8 Id. 648; yet in *Hughes v. Edwards*, 9 Wheat. 489, it is said that a mortgagee may pursue his legal remedy on the mortgage, and at the same time file his bill to foreclose the equity of redemption. In Ohio the bill may be sustained, notwithstanding the statutory remedy by *scire facias*. 1 Ham. 235. In Indiana, a statute requires that the bill should state whether any and what proceedings have been had at law for the recovery of the debt; and the omission of such statement is fatal. *McMullen v. Furness*, 1 Smith, 73. A bill has been held to be demurrable which does not offer to pay superior incumbrances. *Fenno v. Sayre*, 3 Ala. 458. A suit to foreclose a mortgage is *in rem*; *White v. Williams*, 2 Green. Ch. 376; and a decree *in personam* cannot be rendered, unless independently of the mortgage, the court has jurisdiction over the demand. *Crutchfield v. Coke*, 6 J. J. Marsh. 89. The bill need not allege an indebtedness for which it was given; and if alleged, it need not be proved. *Day v. Perkins*, 2 Sandf. Ch. R. 359; see also, *Collins v. Carlile*, 13 Ill. 254. It is proper to remark, by way of caution to the pleader, that much diversity exists in the cases with regard to foreclosure suits, since, in most of the States, there are statutes upon the subject, and a course of decisions peculiar to the State.

Application  
for a loan of  
£3000, which  
sum plaintiff  
advanced.

[ \*183 ]

Indenture of  
mortgage by  
demise for  
securing the  
same.

ments and premises hereinafter particularly described, In trust for the benefit of the said J. S. C. and S. M. C. and having occasion to borrow the sum of £5500 applied to and requested your orator to lend them the sum of £3000 part of such sum of £5500 on the security hereinafter mentioned, and that your orator complied with such request and did accordingly lend and advance the \*sum of £3000 to the said J. S. C., S. M. C. and P. K. And that thereupon and in order to secure the re-payment thereof with interest, the said J. S. C., S. M. C. and P. K. duly executed a certain indenture of demise or mortgage bearing date —, and made or expressed to be made between the said J. S. C., S. M. C. and P. K. of the one part, and your orator of the other part. And that thereby after reciting as therein mentioned, It was witnessed that for and in consideration of the said sum of £3000 to the said J. S. C., S. M. C. and P. K. paid by your orator, the receipt whereof they did thereby acknowledge, They the said J. S. C., S. M. C. and P. K. and each of them did grant bargain sell and demise unto your orator his executors administrators and assigns, All that capital messuage, &c. together with all and every the appurtenances, &c. To hold the said messuages or dwelling-houses lands hereditaments and premises with their appurtenances unto your orator his executors administrators and assigns from the day next before the day of the date thereof, for the term of 1000 years from thence next ensuing, without impeachment of waste, but subject to a proviso for redemption upon payment by the said J. S. C., S. M. C. and P. K. their heirs executors or administrators unto your orator his executors administrators or assigns of the sum of £3000 with interest after the rate of £5 per cent. per annum at or upon the — day of — then next ensuing. As in and by the said indenture reference being thereunto had will more fully appear. And your orator further

Where a plaintiff prayed relief to which he was not entitled, viz. a sale under a trust, instead of redemption or foreclosure as a mortgagee, the court refused the relief asked at the bar under the prayer of general relief; but leave was afterwards granted to amend the bill by praying the proper relief and adding parties, and introducing the necessary statement of facts; *Palk v. Lord Clinton*, 12 Ves. 48, 57, 62.

To a bill for the execution of a trust for sale by way of mortgage, the personal representative of the mortgagor is a necessary party; *Christophus v. Sparke*, 2 Jac. & Walk. 229; *McDonough v. Sheubridge*, 2 Ball & B. 563. If a mortgagee with a power of sale files a bill to foreclose, he will not on *motion* be directed to sell; 1 Madd. Ch. Pr. 532.

Where a bill is filed to foreclose a mortgage of an estate tail, the court does not compel the tenant in tail specifically to suffer a recovery, but decrees him to make a good title to the mortgagee; *Sutton v. Stone*, 2 Atk. 101; and a covenant by a tenant in tail mortgagor for further assurance, may be laid hold of as a ground to enforce a recovery, or, to compel his assignees, if he become bankrupt, to execute a conveyance of the fee to the mortgagee, if they refuse to redeem; *Tourle v. Rand*, 2 Bro. 652; *tye v. Daubuz*, 3 Bro. 595.

On a bill of foreclosure it appeared that though the mortgage money was in fact advanced by the plaintiff, the mortgage (which was by demise) was made to a trustee for him; the trustee was held to be a necessary party; *Wood v. Williams*, 4 Madd. 186. All persons having an interest in the equity of redemption must be made parties to a bill of foreclosure; *Calverley v. Phelps*, 6 Madd. 229; in this case the equity of redemption had been conveyed to trustees upon trust to sell and pay off incumbrances and divide the surplus amongst certain persons specified, with a power to the trustees to give receipts to purchasers; the *cestuis que trust* were held to be necessary parties to the bill filed by a mortgagee for a foreclosure.



showeth unto your lordship that the said sum of £3000 was not paid to your orator at the time for that purpose limited by the said indenture for the payment of the same; and that thereby the estate of your orator in the said mortgaged premises became absolute at law. And your orator further showeth unto your lordship that in or about the year — the said J. S. C. died, having first made his will bearing date —, whereby he devised all his freehold leasehold and copyhold estates, including his interest in the said mortgaged premises, to the said S. M. C. and P. K. and to G. R. of — and their heirs. And your orator further showeth unto your lordship that the said P. K. had no beneficial interest in the said mortgaged premises; and that he died sometime since leaving the said S. M. C. him surviving. And that the said S. M. C. alone is now entitled to the equity of redemption of the said mortgaged premises in trust as to one moiety thereof for his own use and benefit, and in trust as to the other moiety for the use and benefit of himself and the said G. R. as devisees of the said J. S. C. And your orator further showeth that the said sum of £3000 together with a considerable arrear of interest accrued due thereon is now due to your orator on the security of the said premises. And that your orator hath frequently and in a friendly manner applied to the said S. M. C. and requested him to pay the same or to release his equity of redemption of and in the said mortgaged premises. And your orator well hoped that such his just and reasonable requests would have been complied with as in justice and equity they ought to have been. BUT NOW SO IT IS may it please your lordship that the said S. M. C. combining with the said G. R. and contriving how to injure your orator in the \*premises refuses so to do, although your orator charges that your orator did as aforesaid well and truly advance and pay the said sum of £3000 to the said J. S. C., S. M. C. and P. K., and that for securing the re-payment thereof with interest, the said J. S. C., S. M. C. and P. K. duly made and executed to your orator such indenture as is hereinbefore mentioned; and that the whole of the said sum of £3000 together with a large arrear of interest accrued due thereon, is now justly due and owing to your orator on the security aforesaid. And your orator charges that the mortgaged premises are a very scanty security for the re-payment of what is due and owing to your orator on the security thereof. And your orator charges that the said G. R. is and claims to be interested in the said mortgaged premises or some part thereof, and to be entitled to redeem the same but he and also the said S. M. C. refuses so to do. And your orator charges that the said defendants ought either to pay what is due to your orator as aforesaid, or otherwise to release their equity of redemption in the said premises, but they refuse so to do. All which actings, &c. [see form VI. p. 5, *interrogating to the statements and the latter part of the charging part.*]

And that the said defendant may answer the premises. And that an account may be taken by and under the direction and decree of this honorable court of what is due and owing to your orator for principal money and interest on the security of the said mortgaged premises. And that the said defendants may be decreed to pay

Mortgage money not paid at the time limited.

Death of one of the mortgagors. His will.

Death of another of the mortgagors who had no beneficial interest.

Mortgage money and interest still due.

Applications to defendant.

IV.

[ \*184 ]

Refusal.

Charge that plaintiff paid the money.

That the mortgage security was duly executed.

That the mortgage money and interest are still due.

That the estate is a scanty security.

That the other defendant G. R. claims an interest in the property.

Prayer.

unto your orator what shall appear to be justly due and owing to him on the taking of the aforesaid account together with his costs of this suit by a short day to be appointed by this court for that purpose, your orator being ready and willing and hereby offering on being paid his said principal money and interest and costs at such appointed time to re-convey the said mortgaged premises unto the said defendants or unto either of them as this honorable court shall direct. And in default of such payment that the said defendants and all persons claiming under them may be absolutely barred and foreclosed of and from all right and equity of redemption in and to the said mortgaged premises and every part thereof for the residue of the said term of 1000 years. And may deliver up to your orator all and every the deeds evidences and writings in their or either of their possession, custody or power relating to the said mortgaged premises and every part thereof. [*And for further relief see form VIII. p. 5.*] May it please, &c. [*see form No. 1, p. 6.*]

*Pray subpoena against  
S. M. C. and G. R.*

[\*185] \*LIX. *Bill by a mortgagee in fee against the mortgagor and a trustee of an outstanding term, for a foreclosure, and to have the term assigned to a trustee for the plaintiff, and to attend the inheritance.*

To, &c.

Application  
for a loan.

Indentures of  
lease and re-  
lease and  
mortgage.

Mortgage mo-  
ney not paid.

Humbly complaining sheweth unto your lordship your orator R. S. of, &c., That in or about the year —, P. J. of, &c. (one of the defendants hereinafter named) being or pretending to be seised in fee or of some other good and sufficient estate of inheritance of and in the manor, &c. &c. hereinafter mentioned, and having occasion for the loan of a sum of money, applied to your orator to lend him the sum of £—— and in order to secure the repayment of the same with interest, proposed to mortgage to your orator the said manor, &c. which he affirmed to your orator were free from all prior incumbrances save a term of — years in some part of the same premises which as the said P. J. informed your orator was then vested in L. M. of, &c. the other defendant hereinafter named, in trust for him the said P. J. his heirs and assigns, and to be disposed of and assigned as he or they should direct. And your orator further sheweth unto your lordship that your orator did comply with the said requests of the said P. J. and did accordingly lend him the said sum of £——, and for securing the re-payment thereof with interest as aforesaid, by indentures of lease and release bearing date respectively, &c. and made between the said P. J. and A. his wife of the one part, and your orator and one A. B. of, &c. since deceased, of the other part, the said P. J. for and in consideration, &c. [*setting forth the mortgage deed.*] As in and by, &c. And your orator further sheweth that the said sum of £—— or any part thereof was not paid to your orator

or any person on his behalf according to the said proviso in the said indenture of release contained, at the time therein mentioned. And your orator further sheweth unto your lordship that the said P. J. having a further occasion for money, did some time in or about, &c. again apply to your orator to lend him the further sum of £—, and in order to secure the re-payment of the same with interest, offered to charge the said mortgaged premises therewith, which your orator consented to, and accordingly did advance lend and pay to the said P. J. the said sum of £—, and for securing the re-payment thereof with interest as aforesaid, by indorsement made upon the back of said indenture of release bearing date, &c. [*stating the indenture of further charge and bond as a further security therein recited.*] As in and by the same, &c. And your orator further sheweth unto your lordship that the said sum of £— or any part thereof hath not been paid to your orator, neither was the said sum of £— or any part thereof paid to your orator according to the condition in the said in part recited bond at the time therein mentioned, but the said two several sums of £— and £— are now due and owing to your orator, together with a great arrear of \*interest thereon respectively; and the said A. B. being deceased, the estate and interest in the said mortgaged premises is now become absolute in your orator and his heirs. And your orator well hoped that the said P. J. would either have paid your orator the said several sums of £— and £—, and the interest thereof respectively, or would have suffered your orator to have peaceably and quietly held and enjoyed the said premises, and for that purpose your orator hath frequently applied to the said P. J. and requested him to pay the said several sums of £— and £—, and the interest due for the same respectively, or else peaceably to deliver up possession to your orator, of the said mortgaged premises together with all deeds evidences writings muniments court rolls rent rolls and minutes of court relating to or concerning the same, and to release all his right title and equity of redemption of in and to the same hereditaments and premises to your orator and his heirs, the said P. J. well knowing as your orator charges the truth to be, that the said premises are a very scanty security for the principal and interest now due to your orator thereon. And your orator well hoped that the said P. J. would have complied with such your orator's reasonable requests, as in justice and equity he ought to have done. BUT NOW SO IT IS, &c. [*see form IV. p. 5.*] And the said defendant P. J. pretends that the said premises were mortgaged by him to the said L. M. for the said term of — years for securing to him some very considerable sum of money, and that at the time such mortgage was made to your orator as aforesaid, he the said P. J. had only the equity of redemption of the same. Whereas your orator charges that no money was due to the said L. M. on the security of such term, but that the said L. M. is seised of the said term of — years and his name made use of merely as a trustee, and that the said term is now vested in him in trust for your orator and his heirs to attend the inheritance of the said premises, nevertheless the said L. M. refuses to let your orator bring an ejectment in his name for recovery of the premises comprised

Application  
for a further  
loan.

Indenture of  
further  
charge.

[ \*186 ]

Mortgage mo-  
neys and inter-  
est still due.

Applications  
to defendant.

Pretence of a  
prior mort-  
gage for a  
term of years.

Charge that  
the alleged  
mortgagee is  
only a trustee  
of the term.

Pretence of  
prior judgments,  
&c.

[ \*187 ]

Interrogatory  
for a discovery  
as to the claim  
on the part of  
the alleged  
mortgagee :

and as to in-  
cumberances,  
&c.

Prayer.

in the said — years term; And at other times the said P. J. pretends that he hath confessed judgments statutes and recognizances to several persons for several considerable sums of money, and made several other grants conveyances and secret incumbrances which will affect the said premises prior to your orator's title to the same, but he refuses to discover the same, or to whom he hath so sold mortgaged or incumbered the premises as aforesaid or the respective considerations thereof, or the persons to whom he hath confessed such judgments statutes or recognizances and for what sums and for what considerations, so that your orator cannot proceed at law for the recovery of the said mortgaged premises, the said P. J. threatening in case your orator proceeds at law to set up the said incumbrances and the said trust term of — years in the said L. M. all which they pretend are prior to your orator's said mortgage. Whereas your orator charges that such conveyances mortgages or other incumbrances (if any such there be) except the said trust term, are not prior to your orator's said mortgage, or if any of them are prior to your orator's said mortgage, the same are voluntary and fraudulent, and made without any consideration really \*and truly paid; and such judgments statutes and recognizances were not for the payment of any just debt, but without any consideration and voluntary and contrived on purpose to defraud the just creditors of the said P. J. All which actings, &c. [*see form VI. p. 5, interrogating to the stating and charging parts.*] And that the said L. M. may set forth what right or title he hath or claimeth of and in the said premises, or any and what part thereof; and whether he is not a trustee for your orator, and if not why not; and whether he does not and why refuse to let your orator bring an ejectment in his name in order to recover possession of the said premises; and that the said defendant P. J. may set forth what incumbrances there are upon the said mortgaged premises, and when and by whom the same were charged or incumbered, and who claim the same respectively, and may set forth the nature and kinds thereof, and whether the same are by absolute sale mortgage statute judgment recognizance or how otherwise, and the dates tenor and short contents of such several incumbrances and of the deeds records or other instruments or writings relating to or concerning the same; and may set forth the respective considerations thereof and when where and in whose presence such considerations were respectively paid and whether in specie, bills or how otherwise; and whether the said incumbrances or any and which of them are now unpaid and unsatisfied, and how much money is now due on the same respectively.

And that an account may be taken by and under the direction and decree of this honorable court, of what is due and owing to your orator for principal and interest moneys upon or by virtue of his said recited mortgaged securities; and that the said P. J. may be decreed to pay and satisfy to your orator what shall appear to be due and owing to him on the taking of the aforesaid account, by a short day to be appointed by this honorable court, together with your orator's costs. And in default thereof that the said P. J. and all persons claiming under him may be absolutely barred and foreclosed of and from all equity of redemption or claim in and to the said

mortgaged premises and every part thereof, and may deliver over to your orator all deeds charters evidences and writings whatsoever in his custody possession or power relating to or concerning the said manor, &c. and every part thereof; And that the said term of — years may be declared to be in trust for your orator and his heirs, and may be assigned to a trustee in trust for him and them, and to attend the inheritance of the said hereditaments and premises. [*And for further relief see, form VIII. p. 5.*] May it please, &c. [*see form No. 1, p. 6.*]

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\*LX. *Bill of foreclosure filed by trustees and executors who had lent part of their testator's moneys pursuant to the trusts of his will upon a mortgage in fee of certain estates, (a bond also given as a collateral security)—against the mortgagor, and by amendment against a subsequent mortgagee. (Two terms of years had been also assigned to a trustee for the plaintiffs for better securing their mortgage money.)* [ \*188 ]

To, &c.

Humbly complaining show unto your lordship your orators J. V. of, &c. and R. N. of, &c. That W. N. late of, &c. deceased, by his last will and testament in writing bearing date —, and duly executed and attested in such a manner as by law is required for devising real estates, (after directing his just debts, funeral expenses, and legacies, the charges of proving his will, and other incidental expenses to be paid, and giving and bequeathing several specific and pecuniary legacies as therein mentioned,) gave devised and bequeathed unto your orators their heirs executors administrators and assigns respectively all his real estates and also all the residue of his personal estate and effects whatsoever, Upon trust to sell and convert into money in the manner therein mentioned, and to put and place or lay out and invest the moneys to accrue and be produced therefrom in their names, or in the name of the survivor of them, or of the executors or administrators of such survivor on real or government securities at interest, and from time to time to call in the same or any part thereof, and put and place or lay out and invest the same again upon securities of the like nature; And upon trust from time to time to pay the dividends interest and clear yearly proceeds thereof, by equal half-yearly payments, unto the said testator's wife S. M. and her assigns for her life; and from and immediately after her decease, Upon further trust to divide and pay the said moneys so directed to be put and placed or laid out and invested as aforesaid, and the dividends interest and proceeds then due for the same unto and amongst the several persons and in the manner in the said will mentioned; And the said testator appointed your orators executors of his said will. And your orators further show unto your lordship that the said testator departed this life some time in the month of May in the year — without revoking or altering his said

Will of W. N.

His death.

Probate by  
the plaintiffs  
the executors.

Application  
for a loan.

Advancement  
of the money.

[ \*189 ]

Indenture of  
lease and re-  
lease and  
mortgage.

Indenture of  
assignment of  
two terms of  
years.

will; And that your orators as such executors thereof as aforesaid duly proved the same will in the Prerogative Court of the Archbishop of Canterbury on the — day of the said month of —. As by the said will or the probate thereof to which your orators crave leave to refer, when produced will appear. And your orators further show unto your lordship that J. E. of, &c. aforesaid yeoman having occasion for a sum of money, applied to your orators to advance and lend him the sum of £2000 on the security of the freehold hereditaments hereinafter mentioned. And your orators further show unto your lordship, that they did accordingly comply with the request \*of the said J. E. and did on the — day of — by virtue or in pursuance of the trusts so reposed in them by the said will of the said W. N. deceased as aforesaid, lend him the sum of £2000 part of the moneys of the said testator then remaining in the hands of your orators as such trustees and executors as aforesaid; and thereupon and in order to secure the repayment of the said sum of £2000 with interest, by indentures of lease and of appointment and release bearing date respectively —, the indenture of appointment and release being made or expressed to be made between the said J. E. of the first part, T. B. of, &c. yeoman of the second part, and your orators of the third part, for the considerations in the said indenture of appointment and release mentioned, All of the messuage or tenement, &c. &c. were limited and appointed granted released conveyed and assured unto and to the use of your orators their heirs and assigns forever, Subject to the proviso or agreement therein contained for redemption and reconveyance of the said hereditaments and premises on payment by the said J. E. his heirs executors administrators appointees or assigns unto the said J. V. and R. N. their executors administrators or assigns at or in the then dwelling-house of him the said J. V. situate at B. aforesaid, of the full sum of £2000 together with interest for the same after the rate of 5 $\frac{1}{2}$ . per cent. per annum on the — day of — then next ensuing. And your orators further show unto your lordship that by a certain indenture of assignment, bearing date the said — day of —, and made between B. P. therein described of, &c. of the first part, the said J. E. of the second part, your orators of the third part, and J. B. of — aforesaid, gent. (therein described as a trustee nominated by and on the part of your orators) of the fourth part, for the considerations therein mentioned, a certain term of 1000 years theretofore demised or created of and in the said messuage or tenement lands and premises comprised in the aforesaid indenture of mortgage and therein and hereinbefore mentioned or some part thereof by an indenture of demise bearing date —, and expressed to be made between J. F. gent. of the one part, and G. S. gent. of the other part, and also a certain other term of 1000 years heretofore limited or created of and in the said messuage or tenement lands and premises by a certain indenture bearing date on or about —, and expressed to be made between the said J. F. and M. his wife of the one part and W. P. gent. and M. P. his eldest daughter of the other part, and by a fine duly levied in or as of Michaelmas Term in the same year in pursuance of the covenant in the same indenture in that behalf con-

tained, were assigned unto the said J. B. his executors administrators and assigns, In trust in the first place for your orators their heirs and assigns, for the further and better securing to them the repayment of the said sum of 2000*l.* and interest on the day and in the manner and according to the true intent and meaning of the proviso in the said indenture of appointment and release and mortgage, bearing even date therewith for that purpose contained, And after payment thereof, In trust for the said J. E. his heirs, appointees and assigns, and to attend the inheritance of the same premises in manner therein mentioned. And your orators further show unto your \*lordship that for the further and better securing to your orators the repayment of the said sum of £2000 and interest as aforesaid, the said J. E. by a certain bond or obligation in writing under his hand and seal bearing date —, became bound for himself his heirs executors and administrators unto your orators their executors administrators and assigns in the penal sum of £4000, conditioned to be void on payment by the said J. E. his heirs, executors and administrators unto your orators their executors administrators and assigns of the sum of £2000, together with interest for the same at the time and in the manner in the said indenture of appointment and release of even date therewith expressed and declared. As by the said indentures respectively and bond to which your orators crave leave to refer, when produced will appear. And your orators further show unto your lordship that the said sum of £2000 or any part thereof was not paid to your orators or either of them, or to any other person on his or their account at the time for that purpose mentioned in the said indenture of appointment and release, or at any other time; and the same now remains due and owing to your orators, together with a considerable arrear of interest thereon; and your orators being desirous of having the same paid, and the said freehold hereditaments and premises being a scanty security for the same, your orators have frequently by themselves and their agents applied to the said J. E. and in a friendly manner requested him to pay the said principal money and interest; and your orators hoped that the said J. E. would have complied with such requests, or would have released or relinquished his equity of redemption in the said mortgaged premises, and delivered up possession thereof to your orators as in justice and equity he ought to have done. BUT NOW SO IT IS may it please your lordship that the said J. E. combining and confederating with J. H. of, &c.,<sup>(2)</sup> and with divers persons &c. [*see form IV. p. 5,*] hath refused to pay the said principal money and interest to your orators, and he at times pretends that he has made some other mortgage affecting the said premises, and that the same is prior to the said securities made to your orators, and at other times he pretends that he has made or executed some conveyance of the said premises, in trust for his creditors, and that he has confessed judgments statutes and recognizances to several persons in several considerable sums of money, and made several other

[ \*190 ]

Bond as a further security.

Mortgage money not paid, and still due.

Applications.

Pretence of prior incumbrances.

(2) Upon the coming in of the other defendant's answer it was discovered that a mortgage subsequent in point of date to the plaintiffs' had been made to J. H. and the bill was therefore amended by making him a party defendant.

Charge that  
such are vol-  
untary and  
fraudulent.

[ \*191 ]

Claim on the  
part of the  
subsequent  
mortgagee.

Interrogatory  
as to prior in-  
cumbrances ;

And also as to  
the claim by  
the subse-  
quent mort-  
gagee.

Prayer.

conveyances charges and incumbrances of or upon the said pre-  
mises prior to the said securities made to your orators, but refuses  
to discover the same, or to or in favor of whom he hath so con-  
veyed mortgaged or incumbered the said premises as aforesaid, or  
the respective considerations thereof, or the person or persons to  
whom he hath confessed such judgments statutes and recognizances,  
or for what sum or sums and for what considerations. Whereas  
your orators charge that such conveyances mortgages and other in-  
cumbrances, if any such there be, are not prior to the said securi-  
ties made to your orators, or if any of them are prior to the said  
\*securities made to your orators (which your orators do not admit) the  
same are voluntary and fraudulent, and made without any considera-  
tion really and *bona fide* paid for the same, and such judgments  
statutes and recognizances were not for the payment of any just  
debts, but without any consideration, and voluntarily confessed and  
contrived on purpose to defraud your orators of their principal money  
and interest due on their said mortgage securities ; And if any of  
such conveyances mortgages and other incumbrances are subsequent  
to your orators' said mortgage securities, your orators are entitled  
to have a discovery thereof, and the names and descriptions of the  
respective parties thereto, that your orators may bring such parties  
before this honorable court. And the said J. H. claims to have  
some estate right or interest in to or out of the said mortgaged pre-  
mises by virtue of some mortgage or other security made to him by  
the said J. E. subsequently to your orators' said security, but the  
nature and particulars thereof he refuses to discover. All which  
actings doings and pretences of the said J. E. J. H. and the other  
confederates, &c. [see form VI. p. 5, *interrogating to the stating and  
charging parts.*]

And if the said J. E. shall pretend or allege that there is or are  
any conveyances mortgages or incumbrances of or on the said pre-  
mises or any part or parts thereof either prior or subsequently to  
your orators' said mortgage securities, that the said J. E. may set  
forth the dates and parties' names and descriptions, and short material  
contents of such conveyances mortgages or incumbrances respectively,  
and when made and for what considerations ; And if the said J. H.  
shall claim to have any estate right or interest in to or out of the  
said mortgage premises, then that he may set forth and discover the  
nature and particulars thereof.

And that an account may be taken by and under the direction and  
decree of this honorable court of what is due and owing to your  
orators for principal and interest on their said mortgage securities ;  
and that the said defendants or one of them may be decreed to pay  
to your orators what shall appear to be due on the taking of such  
account as aforesaid, together with your orators' costs of this suit by a  
short day to be appointed for that purpose by this honorable court ;  
and in default of such payment that the said defendants and all per-  
sons claiming from through or under them or either of them may be  
forever barred and foreclosed of and from all right and equity of  
redemption of in and to the said mortgaged premises, and every part  
thereof, and may deliver over to your orators all deeds evidences and



writings whatsoever relating to the said mortgaged premises in their or either of their custody or power. [And for further relief, see form VIII. p. 5.] May it please, &c. [see form No. 1, p. 6.]

*Pray subpoena against J. E. and J. H.*

**\*\*LXI.** *Bill of foreclosure of a copyhold estate by the heir and executors of deceased mortgagees against the devisee of the deceased mortgagor; conditional surrenders had been made by the mortgagor, but the mortgagees, or the plaintiff, their heir at law, had not been admitted.*(3) [ \*192 ]

In Chancery.

To, &c.

Humbly complaining show unto your lordship your orator E. B. of, &c. the heir and only acting executor of the last will and testament of E. B. late of, &c. esq. his late father, deceased, who was the heir and surviving executor named in the last will and testament of J. B. late of, &c. gent. his father, deceased, and your orators and oratrix A. B. C. D. and E. F. the other executors named in the last will and testament of the said E. B. deceased, That E. W. late of, &c. widow, deceased, being or pretending to be seised to her and her heirs of or well entitled to the several copyhold messuages or tenements with their appurtenances hereinafter mentioned, and having occasion to borrow the sum of £300, she in or about the month of August — applied to the said J. B. deceased, to lend her the same on security of the said copyhold messuage or tenement, and the said J. B. on the application of the said E. W. accordingly advanced and lent her the sum of £300, and thereupon and in order to secure the repayment thereof with interest, the said E. W. did on the — day of the said month of August — duly surrender into the hands of the lord of the manor of H. in the county of M. All that messuage, &c. subject nevertheless to a proviso for making void the surrender on payment by the said E. W. her heirs executors or administrators, unto the said J. B. his executors administrators or assigns of the full sum of £300, with lawful interest for the same on the — day of August then next. As by

Application  
by E. W. to  
J. B. for a loan  
of £300.

Conditional  
surrender  
made of copy-  
hold premises,  
for securing  
the same with  
interest.

(3) A mortgagee of a copyhold estate who is not in possession, may before admittance bring a bill of foreclosure, and after a decree may proceed in ejectment for possession of the mortgaged premises; *Sutton v. Stone*, 2 Atk. 101.

A court of equity will supply the want of a surrender of a copyhold estate in favor of a purchaser for a valuable consideration, against the party who ought to have made the surrender, or his heir. A mortgagee therefore, who is considered as a purchaser *pro tanto*, may have a surrender supplied, and even against a subsequent purchaser if he had notice of the mortgage; *Jennings v. Moore*, 2 Vern. 609; 1 Madd. Ch. Pr. 67. It was formerly the practice in the cases of a mortgagor covenanting to surrender a copyhold estate to a mortgagee, and dying before making such surrender, for the mortgagee first to file a bill against the heir or devisee of the mortgagor to supply the want of the surrender, and then to file his bill of foreclosure; but the modern practice appears to be in such a case to file one bill for both purposes.

the said surrender, which was duly presented and enrolled, and to which your orators and oratrix crave leave to refer when produced to this honorable court will appear. And your orators and oratrix further show unto your lordship that the said J. B. departed this life on or about the — day of — having first duly made and published his last will and testament in writing bearing date on or about the 1st day of January —, and appointed his sons the \*said E. B. and V. J. B. late of, &c. deceased, executors thereof; and they soon after his decease duly proved the said will in the Prerogative Court of the Archbishop of Canterbury, and took upon themselves the burthen of the execution thereof; and the said V. J. B. afterwards departed this life in the life-time of the said E. B. his brother. And your orators and oratrix further show unto your lordship that the said E. W. did not pay the said principal sum of £300 and the interest thereof at the time mentioned in the said surrender or afterwards, and the said principal sum of £300 remaining unpaid, and the said E. W. having occasion to borrow the further sum of £50, did in or about the month of May — apply to the said E. B. deceased, and request him to advance and lend her the sum of £50 on the security of the said copyhold messuages or tenements, and the said E. B. consented thereto, and accordingly did, on or about the 11th day of the said month of May advance and lend such sum of £50 to the said E. W. and for securing the re-payment thereof with interest, the said E. W. did on or about the said 11th day of May —, duly surrender all the said copyhold messuages or tenements and premises with the appurtenances, To the use of the said E. B. deceased his heirs and assigns, subject to a proviso for making void the same surrender upon payment by the said E. W. her heirs executors or administrators unto the said E. B. deceased of the sum of £50 with lawful interest for the same on the 11th day of May then next. As by the said surrender which was duly presented and enrolled, and to which your orators and oratrix crave leave to refer when produced will more fully appear. And your orators and oratrix further show unto your lordship that the said E. B. departed this life on or about the — day of — having in his life-time duly made and published his last will and testament in writing bearing date —, and thereby appointed your orators and oratrix executors thereof, and after his death your orator E. B. alone duly proved his said will, and undertook the executorship thereof, power being reserved to your orators and oratrix A. B. C. D. and E. F. to prove the same. As by the probate of the said will when produced will appear. And your orators and oratrix further show unto your lordship that the said E. W. departed this life several years ago, and she in her life-time duly made and published her last will and testament in writing, and thereby devised unto R. M. of, &c. and his heirs all the said copyhold messuages or tenements, and all her estate and interest therein; As by the said will if produced would appear; and the said R. M. upon her death by virtue of her said will entered into possession and receipt of the rents and profits of the said copyhold messuages or tenements, and has ever since been and now is in the possession or receipts of the rents and profits

Death of J. B.

His will, appointing E. B. and V. J. B. executors who proved the same.

[ \*193 ]

Death of V. J. B.

The 300*l.* and interest not paid by E. W.

Application by her to E. B. for a loan of 50*l.*

Conditional surrender of the said premises made to E. B. for securing the same.

Death of E. B.

His will, appointing plaintiffs executors—one only proved the same.

Death of E. W. the mortgagor.

Her will, devising the said estate to the defendant, who entered upon and is now in possession of the same.

thereof; and the said principal sums of 300*l.* and 50*l.* remaining unpaid with an arrear of interest, the said R. M. by a memorandum in writing under his hand bearing date on or about the 2d day of January —, agreed with your orator E. B. that the said two sums of 300*l.* and 50*l.* together with the sum of —*l.* the amount of the arrears of interest then due should carry interest from the 16th day of August — at the rate of 5*l.* per cent. per annum, As by such memorandums when produced \*will appear and your orators and oratrix further show unto your lordship that the said several sums of 300*l.*, 50*l.*, and —*l.* still remain due and owing upon the said security with an arrear of interest for the same; and your orator E. B. as acting executor as aforesaid, being desirous of having the same paid, and the said copyhold messuages being a scanty security for the same, your said orator hath frequently and in a friendly manner applied to the said R. M. requesting him to pay the said principal money and interest. And your orators and oratrix well hoped that the said R. M. would have complied with such requests or would have relinquished his equity of redemption in the said mortgaged premises, as in justice and equity he ought to have done. BUT NOW SO IT IS, &c. [*see form IV. p. 5.*] He the said defendant hath refused to pay the said principal money and interest to your orator E. B. and he refuses to release his equity of redemption to your orator E. B. as heir to the said E. B. and J. B. deceased. And in case your said orator shall take or recover possession of the said copyhold premises he intends at some future time to call on him for a redemption of the said premises, and an account of the rents and profits thereof, and he at times pretends that there are some other mortgages or incumbrances which affect the said premises, and that the same or some of them are prior to the said securities made to the said J. B. and E. B. deceased, but he refuses to discover the particulars thereof, or in whom the same are vested. All which actings, &c. [*see form VI. p. 5, interrogating to the stating and charging parts.*]

And that an account may be taken by and under the direction and decree of this honorable court of what is due and owing to the estates of the said J. B. and E. B. deceased for principal and interest on the said securities. And that the said defendant may be decreed to pay to your orator E. B. as acting executor as aforesaid, what shall appear to be due on the taking of such account as aforesaid together with your orator's and oratrix's costs of this suit by a short day to be appointed for that purpose by this honorable court. And in default of such payment, that the said defendant and all persons claiming under him may be henceforth debarred and foreclosed of all right and equity of redemption to and in the said copyhold premises. And that your orators and oratrix may have such further and other relief in the premises as to your lordship shall seem meet and the nature of this case may require. May it please, &c. [*see form No. 1, p. 6.*]

*Pray subpoena against R. M.*

Agreement by him that the sums due, together with the arrears of interest, should carry interest at 5*l.* per cent.

[ \*194 ]

The moneys still due with an arrear of interest.

Applications to the defendant for payment.

Refusal.

Pretence that there are other incumbrances which he refuses to discover.

Prayer.

\*LXII. *Bill of foreclosure by a mortgagee;—praying for an account of what is due for principal and interest; and that he may be at liberty to redeem a term created by a will for raising portions for testator's daughters, if any thing should appear to be due under the trusts thereof. The trustees of the term had brought an ejectment and recovered possession of great part of the mortgaged premises; and an injunction is therefore prayed to restrain further proceedings at law. The mortgagor having taken the benefit of the insolvent act, his assignees are made parties.*

States that F. R. was seised in fee simple of premises subject only to the payment of £—— the portions of his sisters M. R. and A. R. by virtue of the will of their father.

States a mortgage in fee to H. B.

States the payment of £—— to H. B. and £—— to F. R. by the *plaintiff*, and the conveyance from H. B. and F. R. to the *plaintiff* by way of mortgage.

States that F. W. of, &c. and S. J. late of, &c. intending to harass and perplex *plaintiff*, did in Easter Term last cause an action of ejectment to be brought in his Majesty's Court of K. B. for the recovery of the possession of the said mortgaged premises, and did cause a declaration therein to be delivered to R. M. tenant in possession of the greater part of the said premises, to which ejectment *plaintiff* by rule of said Court of K. B. did cause herself to be made defendant in the room of the casual ejector, and the said cause coming on to be tried at the last assizes in and for the county of S., the jury sworn for that purpose did find a verdict for the plaintiff, the said F. W. and S. J. the lessors of the plaintiff having proved a trust term of —— years vested in them in most part of the said mortgaged premises under the will of I. R. deceased, late father of the said F. R.

States the trusts of the term.

States that the personalty and a part of the premises in possession of the trustees were sufficient to answer the trust of the term, and that they were actually answered.

States applications by *plaintiff* to F. R. to pay the mortgage-money and interest to *plaintiff*, or else to deliver possession to her of the said mortgaged premises together with all deeds, &c. relating to the same, and to release all his right and equity of redemption to the same premises to *plaintiff* and her heirs; Also applications by *plaintiff* to the said F. W. and to the said S. J. in his life-time to assign to a trustee for *plaintiff*, the said trust term of —— years limited to them by the will of the said I. R. as aforesaid they well knowing that the trusts of the said term were fully discharged.

*Pretence* that the premises were in mortgage to some other persons for securing some considerable sum of money, and at the time the mortgage was made to the said H. B. the said F. R. had only the equity of redemption of the same.

*Charge* that no mortgage was made of the premises by the said

F. R. or any other person prior to the said mortgage to the said H. B. or if any such there is that the same is voluntary and fraudulent, \*and made without any consideration, but that the said F. R. was seised and possessed of the legal estate of and in the said premises at the time of the execution of the said mortgage to the said H. B. as aforesaid.

[ \*196 ]

*Pretence* that F. R. hath confessed judgments, &c. [*vide ante* p. 190.]

*Claim* by F. W. as the surviving trustee that he is entitled to hold the premises so devised to them the said F. W. and S. J. by the will of the said I. R. as aforesaid for the remainder of the term of — years, sometimes pretending there are several debts of the said I. R. undischarged, but the said F. W. refuses to discover the amount of the said pretended unsatisfied debts of the said I. R. or to whom or on what account they are due or how the same are secured.

*Charge* that all the debts of the said I. R. are paid.

*Pretence* by the said F. W. that the fortunes of the said daughters of the said I. R. the testator directed to be raised by his will as aforesaid or some considerable part thereof yet remain unsatisfied and a charge upon the said premises.

*Charge* that the personal estate of the said testator I. R. and the premises directed by his said will to be sold for the payment of his debts were more than sufficient for that purpose; or if the same fall short of payment thereof the said F. W. and S. J. paid the same out of the rents and profits of the said trust premises which came to their hands to a very considerable amount, and were more than sufficient not only to make good any deficiency in the fund appropriated for payment of the said testator's debts, but also to have discharged the fortunes directed to have been raised for the said testator's three daughters, and that if the said F. W. and S. J. did not apply such sums of money as they received by the rents and profits of the said trust premises in discharge of the said testator's debts and other trusts in them reposed, but disposed of the same or any part thereof to or for any other purposes, that the said F. W. the surviving trustee ought to answer such sums as have been paid out of the rents aforesaid out of his own proper effects.

*Pretence* by F. W. that although the trusts of the said term of — years are fully performed and discharged, yet he is entitled to hold the said premises for the remainder of the said term of — years for his own use and benefit and that he will not assign the same; and the said M. R. *pretends* that she is entitled to some very considerable sum of money from the said premises by virtue of the will of her father the said I. R. not only on account of her own fortune and the interest thereof, but also on account of D. R. deceased, late one of the daughters of the said I. R., alleging that the said D. R. did by some deed or writing or by her last will appoint the payment of the sum of —*l.* being the amount of her portion or fortune to or in favor of her the said M. R.; and the said M. R. insists that the said F. W., (*the surviving trustee*) is entitled to hold the said premises until such time as her said demands thereon are fully satisfied and paid.

[ \*197 ] *Charge* that the said sum of —*l.* hereinbefore mentioned to have been borrowed by the said F. R. from the said H. B. was borrowed at the request and with the privity of the said M. R. to discharge the fortunes so given to her and the said D. R. deceased by their said father I. R., and that the said sum of £—— was accordingly paid by the said F. R. to the said M. R. and D. R., and that the said A. R. is now in a nunnery in France.

*Charge* that the fortune of the said D. R. was paid to her in her life-time and that the said premises are well and sufficiently exonerated therefrom, and that the said F. R. having contracted many considerable debts and having declared himself insolvent and been discharged from the King's Bench prison under the late Act of Parliament for the relief of insolvent debtors, and the said I. T., &c. having lately obtained an assignment of the estate and effects of him the said F. R. from F. L. the clerk of the peace for the county of S. under the late insolvent Act, set up some claims upon the said estates in right of the said F. R. and particularly allege that the said F. R. was only tenant in tail of the said estates.

*Charge* that the said F. R. suffered a recovery of the said estates, and declared the uses thereof to himself in fee.

*Pretence* that the demands of the said M. R. on the said premises are just and reasonable, and that the said F. R. did not borrow the said sum of —*l.* from the said H. B. to discharge the fortunes of the said M. R. and D. R. or that if it were borrowed for that purpose he the said F. R. neglected to pay the same.

*Charge* that the said indenture of mortgage to the said H. B. expressly mentions that the said sum of —*l.* was borrowed by the said F. R. in order to pay the fortunes of his sisters the said M. R. and D. R., and that the said indenture of mortgage expressly declares that the said F. R. had paid his sisters their fortunes; and the said F. R. well knows that the said sum of —*l.* was paid accordingly, and that he the said F. R. did take some discharge or acquittance for the same from the said M. R. and D. R. which he has either destroyed, or now conceals in order to defraud his just creditors and to encourage and support the fraudulent designs of his sister the said M. R.

*That defendant F. R. admits* that he has paid his said sister the said A. R. her fortune, though he refuses to produce any release for the same, but *pretends* that the said fortune of the said D. R. deceased is unsatisfied and a charge upon the premises.

*Charge* that the said D. R. did some years ago receive her said fortune and did not make any appointment thereof by will or otherwise to or in favor of the said M. R. or if she did make the same such appointment is null and void, she the said D. R. having at the time of her death no just claim on the said premises.

*Pretence* on the part of the said W. H. that the said premises in mortgage to *plaintiff*, are also in mortgage to him with other the estates of the said F. R. for securing the re-payment of a very large sum of money lent with interest, but the said W. H. refuses to discover the date or contents of such mortgage, sometimes pretending that it is prior to *plaintiff's* title.

*Charge* that if the said W. H. had any mortgage or incumbrance on the said premises with other estates of the said F. R., that the \*same is made for the payment of a much larger sum of money than was truly lent and advanced to the said F. R., and that the same is subsequent to *plaintiff's* title and ought to be postponed thereto; and the said W. H. &c. pretend that they are entitled to the equity of redemption of and to the said mortgaged premises in trust for the creditors of the said F. R. under and by virtue of some conveyance thereof to them made by the said F. R. but refuse to discover the date and contents thereof, and the said W. H. &c. refuse either to pay unto *plaintiff* the principal and interest due to her upon and by virtue of the said before mentioned mortgage, or to release to *plaintiff* and her heirs the equity of redemption of and in the said mortgaged premises, without the direction and indemnity of the court.

[ \*198 ]

That an account may be taken of what is due to *plaintiff* upon her aforesaid security in respect of the said sum of ——.l. and interest. And in case any thing shall appear to be due under the trusts of the said term of — years, that *plaintiff* may be at liberty to redeem the same; and that what *plaintiff* shall pay in redemption of the said term of — years with subsequent interest computed thereon may be added to what shall be found due to her upon her said security; and that the said several defendants may be decreed by a short day to be limited by this honorable court, to pay to *plaintiff* the whole of what shall appear to be due to her as aforesaid, or in default thereof that they may be barred and absolutely foreclosed of and from all right and equity of redemption in and to the said mortgaged premises, and may deliver up to *plaintiff* all deeds and writings in their custody or power belonging or relating to the said mortgaged premises; and that the said F. W. may be restrained by the injunction of this honorable court from proceeding further at law to recover possession of the said mortgaged premises; and that a receiver may be appointed by this honorable court of the rents of the said mortgaged premises. [And for further relief.]

M.

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**\*\*LXIII.** *Prayer of a bill by mortgagees in possession of the title-deeds against the assignees of the mortgagor bankrupt, and a mortgagee who claimed a priority in point of date,(4) (but the circumstances stated in the bill tending strongly to show that his mortgage had been antedated, the charges relative thereto are introduced;—the plaintiff's mortgage was made by indentures of lease and appointment and release, with an assignment of an outstanding term to a trustee)—The prayer is for an account and foreclosure against the second mortgagee, then for a further account, and*

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(4) It is quite settled that there must be either *fraud, concealment, or such gross negligence as may be presumed to have originated in a fraudulent intention*, to postpone a mortgagee who omits to take the title-deeds; *Tourle v. Rand*, 2 Bro. Ch. Ca. 649, n. (1), 5th edition, by Belt, and the cases there referred to; and see also 1 Madd. Ch. Pr. 323, 4.

*for a sale of the property before the commissioners (acting under the commission of bankrupt against the mortgagor);—and in case the moneys to arise therefrom should not be sufficient to pay plaintiff's mortgage-money, interest, and costs, then for liberty to prove the remainder of the mortgage-money, and interest against the separate estate of the bankrupt.*

*An opinion given by an eminent counsel previously to the bill being drawn, is subjoined.*

Claim by another mortgagee to a charge prior to plaintiff's security.

Charge that it was made subsequently to plaintiff's security.

Or that if it bears a prior date that it was antedated.

That the defendant or his agents had previous notice of plaintiff's charge, or knowledge of the circumstances stated with regard to the loan, by the plaintiffs. Charge that plaintiffs are entitled to a

[ \*200 ] charge prior to the defendant, who ought either to redeem, or release his equity of redemption.

And the Right Honorable D. Earl of E. alleges that he is entitled to a charge upon the said freehold and leasehold messuages cottages or tenements lands hereditaments and premises so mortgaged to your orators as aforesaid, for a sum of £2000 and interest under and by virtue of certain indentures of lease and release and assignment made to him thereof by the said R. W. P. prior in point of time to the aforesaid mortgage security made and executed to your orators, bearing date the said 17th and 18th days of July —. Whereas your orators charge that if any such mortgage was made and executed to the said Earl of E. the same was made and executed by the said R. W. P. subsequently to the date of your orators' said mortgage securities. And your orators further charge that if the same does actually bear date prior to your orator's said security, which your orators do not admit, the same was antedated, and was not signed and executed by the said R. W. P. on the day which the same purports to bear date. And your orators further charge that the said Earl of E. or his agent or agents who transacted the business of the said mortgage for him, had previous notice of your orators' charge upon the said premises, or that the said Earl of E. or his said agent or agents had some knowledge of the circumstances hereinbefore stated, with regard to the loan of the sum of 3000*l.* to the said R. W. P. by your orators. And that the said Earl of E. or his said agent or agents had some reason to know believe or suspect, or might have ascertained that your orators had some lien or charge upon the said mortgaged premises. And your orators further charge that under the circumstances and for the reasons hereinbefore stated, your orators are entitled to a charge upon the said estates and premises comprised in their said mortgage security, prior to the said Earl of E. and to be paid the sum of 300*l.* with the arrears of interest thereon, prior or in preference to the said alleged claim of the said Earl of E. And your orators further charge that the said Earl of E. ought either to redeem your orators, and to pay to them the amount of the said principal moneys and interest due on their said mortgage securities, with their costs, or to permit your orators peaceably and quietly to hold and take possession of the said mortgaged hereditaments and premises, and to release all his right title and equity of redemption therein and thereto.

And that your orators may be declared to be entitled to a prior charge on the said estates lands and premises, and to be paid their said mortgage debt or sum of 3000*l.* together with interest and costs, prior or in preference to the said D. Earl of E. And that the said T. S. and T. W. P. may be decreed by this honorable court



to come to a just and fair account with your orators for the principal and interest now due and owing to your orators upon or by virtue of their said mortgage security. And that the said D. Earl of E. may be decreed to pay the same to your orators by a short day to be appointed by this honorable court, together with your orators' costs. And in default thereof that the said D. Earl of E. may stand and be absolutely barred and foreclosed of and from all right and equity of redemption in and to the said freehold and leasehold hereditaments and premises comprised in the said indentures of lease and release and mortgage of the 17th and 18th days of July ——. And that an account may in like manner be taken of what shall be then due and owing to your orators for principal money and interest upon or by virtue of their said mortgage securities. And that the said freehold and leasehold hereditaments and premises may be sold before the major part of the commissioners in the said commission named and all necessary and proper parties be ordered to join with your orators in making and executing such conveyance assignments and other assurances to the purchaser or purchasers of such freehold and leasehold hereditaments and premises as may be necessary and proper; and that out of the money which shall arise and be produced from such sale or sales, the costs charges and expenses of your orators in this suit and of such sale or sales to be made as aforesaid, and the perfecting the titles to the said freehold and leasehold hereditaments and premises and otherwise relative thereto may be in the first place paid, and that the surplus or residue of the money to arise and be produced from such sale or sales as aforesaid, or a competent part thereof, may be applied in payment to your orators of the said sum of 3000*l.* and interest; but if the same shall not be sufficient to satisfy and pay the said principal sum of 3000*l.* and interest, then that your orators may be at liberty to prove the remainder of the said sum of 3000*l.* and interest under the said commission against the separate estate of the said R. W. P. and receive dividends upon the same *pari passu* with the other separate creditors of the said R. W. P. who shall have proved their debts under the said commission. And that your orators may have such \*further and other relief in the premises as the nature of this case may require and to your lordship shall seem meet. May it please, &c.

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*Pray subpoena against T. S. and T. W. P.*

*and letter missive to the Earl of E.*

#### OPINION.

"I am of opinion that the second mortgagee cannot be compelled to concur in a sale of the mortgaged premises when there are two or more mortgagees, and they do not all concur in selling the property.

"The only course is for the first mortgagee to file a bill of foreclosure against the second mortgagee, to which the assignees must be parties defendants, and I think under such circumstances the prayer of the bill should be, that in case the second mortgagee does not redeem, but should submit to or be decreed to be foreclosed, then that the mortgaged premises should be decreed to be sold before the commissioners, and out of the moneys arising from the sale the

parties' costs and expenses should be paid in the first instance, and the residue applied in satisfaction of the interest and principal of the mortgage; and that the plaintiff may be permitted to prove the residue of his debt under the commission, and receive dividends *pari passu* with the other creditors. This will give the first mortgagee the same relief he would be entitled to in a summary manner if there were only one mortgage.

"Another mode I think may be adopted, although I never knew it practised, viz. for the first mortgagee to petition in the bankruptcy to have not the estate but his mortgaged interest sold, for the purpose of ascertaining the amount he ought to prove under the commission. In such case the purchaser would be in effect the first mortgagee, but without any right of recourse against the bankrupt's estate, if the mortgaged property should prove deficient. This mode of sale would probably prove disadvantageous to the first mortgagee."

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\*LXIV. *Charges in a bill by a mortgagee to establish certain memorandums of agreement given by the mortgagor previously to his bankruptcy, and for a foreclosure, against two other mortgagees and the assignees of the mortgagor;—with the interrogatories relating to those charges.*

Defendant G. A. claims a mortgage for 3000*l*.

Charge that no part of the consideration was ever paid.

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Charge that G. A. had no property of the value of 3000*l*., and in fact had very little property of his own.

But the said defendant G. A. alleges that he is a mortgagee of the said premises for the sum of £3000 and interest, or for some such or the like sum. Whereas your orator expressly charges the contrary thereof to be the truth. And your orator further charges that although the indenture under which the said defendant G. A. claims to be such mortgagee as aforesaid, purports to be executed to him by the said T. H. (*the mortgagor*) in consideration of the sum of 3000*l*., yet that no part of such alleged consideration was ever paid given or allowed by the said defendant G. A. to the said \*T. H. and so it would appear if the said defendant G. A. would set forth how and in what manner the consideration of the said indenture was constituted and made up, and all the particulars whereof the same consisted, and when and where and how and in what manner and in whose presence such consideration and each and every part thereof was paid, given or allowed by the said defendant G. A. and all the particulars relating thereto. And your orator further charges that the said defendant G. A. at the time of the said consideration is alleged to have been paid, given or allowed by him to the said T. H. had not any property of his own to any such or the like amount in value of the said sum of 3000*l*., but was in fact then possessed of little or no property of his own, and so it would appear if the said last-named defendant would set forth what property he was possessed of or entitled to at the time the said sum of 3000*l*. is alleged to have been advanced by him to the said T. H. and the nature and particulars of such property, and out of what funds or other property the said alleged sum of 3000*l*. was raised, and all the

particulars relating thereto; and as evidence of the matters aforesaid your orator charges that the said defendant G. A. for some years prior to the latter end of the year — resided at or near L. in the county of S. and was during such time or the greater part thereof in the habit of assisting one Mr. P. who was a banker at L. aforesaid in the concerns of his the said Mr. P.'s business, and that the said Mr. P. as a remuneration for the services of the said defendant G. A. during such period from time to time paid the tradesmen's bills of the said defendant G. A. or some of them, and supplied him with trifling sums for pocket money, the said defendant G. A. having then no other means of support; and that the said Mr. P. having become a bankrupt some time in or about the latter end of the said year —, the said defendant G. A. thereupon came to London, and he soon afterwards resided or kept house with one of the daughters of the said defendant M. N.,<sup>(5)</sup> and he thereby became well acquainted with the said defendant M. N. and the said T. H. And as further evidence of the matters aforesaid, your orator charges that the said defendant G. A. has several times since his arrival in L. aforesaid been arrested for debt at the suit of several persons, and has been confined in the King's Bench prison for want of bail, and that the deed by virtue of which the said defendant G. A. claims to be entitled as such mortgagee as aforesaid was executed by the said T. H. immediately or a short time before his bankruptcy, and in contemplation thereof. And your orator further charges that in case it shall appear that notwithstanding the circumstances aforesaid the said defendant G. A. is a *bona fide* mortgagee of the said premises or of any part thereof, then that the said defendant at the time the aforesaid indenture was executed to him, well knew or believed or suspected or had some reason to know or believe or suspect, that the aforesaid memorandums had been respectively executed to your orator by the said T. H., or that the said \*T. H. had entered into some other agreements or agreement with your orator to some such or the like effect.

And that the said defendant G. A. may in manner aforesaid answer and set forth whether he does not allege that he is a mortgagee of the said premises, or of some and what parts or part thereof, for the sum of 3000*l.* and interest, or otherwise and how; And whether the indenture under which he claims to be such mortgagee does not purport to have been executed to him in consideration of the sum of 3000*l.* or for some and what other consideration; And whether any and what part of such alleged consideration was ever and when paid, given or allowed by the said defendant G. A. to the said T. H.; And that the said defendant G. A. may set forth the date and short material contents of such last-mentioned indenture; And that he may also set forth how and in what manner the consideration of the said indenture was constituted and made up, and all the particulars whereof the same consisted, and when and where and how and in what manner and in whose presence such consideration and each and every part thereof was paid, given or

That he resided at L. and was in the habit of assisting a banker there in his business who paid G. A.'s bills and supplied him with pocket money.

That the banker becoming bankrupt, G. A. came to London.

That G. A. has been arrested for debt, and confined in prison.

That his mortgage deed was executed by the mortgagor shortly before his bankruptcy, and in contemplation thereof.

Charge that if he is a *bona fide* mortgagee, that he knew of plain-

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tiff's agreements for a mortgage before his mortgage was executed.

(5) M. N. claimed a mortgage on the property prior to the plaintiff.

allowed by the said defendant G. A. and all the particulars relating thereto; And whether the said defendant G. A. at the time the said consideration is alleged to have been paid, given and allowed by him the said T. H., had any and what property of his own to any such or the like amount in value as the said sum of 3000*l.*, or how does he make out the same; And whether he was not in fact then possessed of little or no property of his own; And that the said last-mentioned defendant may set forth what property he was possessed of or entitled to at the time the said sum of 3000*l.* is alleged to have been advanced by him to the said T. H. and the nature and particulars of such property, and out of what funds and other property the said alleged sum of 3000*l.* and each and every part thereof was raised, and all the particulars relating thereto; And whether the said defendant G. A. did not for some and what years or for some and what other time prior to the latter end of the year —, or to some and what other time, reside at or near L. aforesaid or elsewhere; And whether he was not during such time, or the greater or some and what part thereof, in the habit of assisting Mr. P. hereinbefore named in the concerns of his the said Mr. P.'s aforesaid business or otherwise and how; And whether the said Mr. P. was not a banker at L. aforesaid or elsewhere, and where and how otherwise; And whether the said Mr. P. did not as a remuneration for the services of the said defendant G. A. or otherwise and how during such period, or during some and what part thereof, from time to time, or at some and what times or time, pay the tradesmen's bills of the said defendant G. A. or some and which of them, and supply him with trifling or some and what other sums of money, for pocket-money or otherwise and how; And whether the said defendant G. A. had then any and what other means of support; And whether the said Mr. P. did not become a bankrupt at or about the time hereinbefore mentioned in that behalf, or at some other and what time in particular; And whether the said defendant G. A. did not thereupon, or upon some and what occasion, come to L.; and

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\*whether he did not soon or some and what time afterwards reside or keep house with one of the daughters of the said defendant M. N. or with whom else did he then reside or keep house; And whether he did not thereby or otherwise and how become well acquainted with the said defendant M. N. and the said T. H. or with either and which of them or how otherwise; And whether the said defendant G. A. has not several or some and what times or time since his arrival in L. aforesaid been arrested for debt at the suit of various or some and what persons or person; And whether he has not been confined in the King's Bench prison or elsewhere: And whether for want of bail or otherwise and how; And whether the deed by virtue of which the said defendant G. A. claims to be entitled as mortgagee as aforesaid was not executed by the said T. H. immediately or some short and what time before his bankruptcy, and in contemplation thereof, or how does the defendant G. A. make out the contrary; And that the said defendant G. A. may in manner aforesaid answer and set forth whether he did not at the time the aforesaid indenture was executed to him, well or in some and in what degree know or believe or suspect, or had not some

and what reason to know or believe or suspect, that the aforesaid memorandums or either and which of them, had been executed to your orator by the said T. H., or that the said T. H. had entered into some and what other agreements or agreement with your orator to some such or the like or some and what other effect or how otherwise.

## 12. BILLS OF INTERPLEADER.<sup>f</sup>

A bill of interpleader is where the person exhibiting the bill claims no right in opposition to the rights claimed by the persons against whom the bill is exhibited, but prays the decree of the court touching the rights of those persons, for the safety of the person exhibiting the bill; as where two or more persons claim the same thing by different or separate interests, and another person not knowing to which of the claimants he ought of right to render a debt or duty, or to deliver property in his custody, (1) fears he may be hurt by some of them, he may

(1) This will not extend to cases of bailment where the parties may be compelled to interplead at law; *Ld. R.'s Tr.* p. 48, n.

<sup>f</sup> A bill of interpleader lies only where two or more persons claim the same debt or duty from the complainant, by different or separate interests. *Llaves v. Johnson*, 4 Ala. 267; *Green v. Mumford*, 4 R. I. 313; *Sherman v. Partridge*, 4 Duer, 646; *Adams v. Dixon*, 19 Geo. 513; *Farley v. Blood*, 10 Foster, 354. And it is a proper remedy where suits are pending or threatened by the claimants; *Yarborough v. Thompson*, 3 S. & M. 291; but will not lie after a judgment at law on the claim in favor of either or both of the claimants. *Yarborough v. Thompson*, 3 S. & M. 291. It is sufficient if, of the two adverse claims against the complainant, one of the claims is legal and the other equitable. *Schuyler v. Pelissier*, 3 Edw. Ch. 191; *Richards v. Salter*, 9 Johns. C. R. 445. The bill must show that the plaintiff is a mere stakeholder, having no personal interest in the controversy; it should not set out the facts on which the title of the claimants respectively is based, but ought only to state in a general way the nature of their claims. *Shaw v. Coster*, 8 Paige, C. R. 339; *Lozier v. Van Saun*, 2 Green, Ch. 325. If the dispute is concerning a sum of money, the bill should offer to bring it into court, or it will be demurrable. *McGarrah v. Prather*, 1 Blackf. 299; *Shaw v. Chester*, 2 Edw. Ch. 405. This seems, however, ruled otherwise, in *Nash v. Smith*, 6 Conn. 421, where it was said that the court might order the plaintiff to bring in the money upon the application of either of the defendants. Where land is the object of the controversy, the plaintiff should make conveyances of the same ready for delivery to each of the defendants; and if he has not done so, but has by the bill offered to deliver to the party who shall be decreed to be entitled, the court will order such deeds to be made, and filed with the clerk, subject to further order. *Farley v. Blood*, 10 Foster, 354. The bill cannot be sustained if it appears therefrom that one of the defendants is entitled to the debt or duty claimed. *Mohawk and Hudson Railroad v. Clute*, 4 Paige, C. R. 384; *Shaw v. Coster*, 8 Id. 339. The bill must contain an affidavit denying collusion, or it will be demurrable. *Shaw v. Chester*, 2 Edw. C. R. 405; *Gibson v. Goldthwaite*, 7 Ala. 281. Where the facts stated in the bill are admitted in the answer, and no new facts are set up in bar of the suit, the cause, upon a replication being filed, is set down for a decree to interplead, before the proofs are taken as between the defendants, and the complainant is dismissed with his costs up to that time, paid out of the fund. *City Bank v. Bangs*, 2 Paige, C. R. 570. It is said, however, in *Yates v. Tisdale*, 3 Edw. Ch. 71, that it is not usual for the plaintiff, in such cases, to file a replication, although it is admissible for him to do so. In Connecticut, the practice, in relation to bills of interpleader, differs in some respects from that of England, and of many of the other States. *Consociated Presbyterian Society v. Staples*, 23 Conn. 544.

exhibit a bill of interpleader against them, praying that they may interplead, so that the court may adjudge to whom the property belongs, and the plaintiff may be indemnified. *Ld. R.'s Tr.* 32, 47, 125.

[ \*205 ] The plaintiff should also by his bill offer to bring the money or property claimed into court, for the benefit of such party to whom the court shall adjudge the same to belong ;(2) and in case he does \*not make such offer, the court, upon application of either of the defendants, will order the plaintiff to bring the property or to pay the money into court, or the Bank of England, for the benefit of such party to whom the court, at the hearing of the cause, shall decree the same to belong. 1 *Madd. Ch. Pr.* 174.

The plaintiff is required to annex to his bill an affidavit that it is not exhibited in collusion with any of the parties, to induce the court to entertain jurisdiction of the suit; and the want of such affidavit is therefore a ground of demurrer. *Ld. R.'s T. R.* 49, 126.

An interpleading bill is exactly upon the footing of an injunction to stay waste,(3) and may be supported by affidavit of material facts. 2 *Ves. jun.* 109.

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LXV. *Bill of interpleader by a lessee of tithes against the rector, who had leased the same to him, and other persons claiming to be entitled thereto.*(4)

*The form of the affidavit to be annexed to the bill is added at the conclusion ; p.* 208.

States that on or about — *plaintiff* entered into an agreement in writing with defendant J. rector of the parish of S. in the county

(2) If he does not do so, it is perhaps in strictness a ground of demurrer; *Ld. R.'s Tr.* 126; and see 1 *Madd. Ch. Pr.* 174.

(3) See Lord Eldon's observations on this expression, 2 *Ves. & B.* 412, n.

(4) The rule that a tenant cannot compel his landlord to interplead (*Dungey v. Angove*, 2 *Ves. jun.* 303, 9,) does not prevail where the claim of a third person arises by the act of the landlord subsequently to the commencement of the relation of landlord and tenant; *Cowtan v. Williams*, 9 *Ves.* 107; *Clarke v. Byne*, 13 *Ves.* 383 b, 2d ed.

It is necessary to a bill of interpleader that the plaintiff should admit a right in each party to sue him, and it is sufficient to support such a bill that each of the defendants has a *claim* by virtue of an alleged legal or equitable right to the matter in question, *Morgan v. Marsack*, 2 *Mer.* 110, and the cases there referred to. Where the plaintiff has parted with the property, he cannot sustain an interpleading bill upon an undertaking to pay over the value to the party entitled; *Burnett v. Anderson*, 1 *Mer.* 405; see also *Slingsby v. Boulton*, 2 *Ves. & B.* 334.

A debtor of a bankrupt cannot support an interpleading bill against the bankrupt and his assignees, *Harlow v. Crowley*, in the Exchequer, *Buck's B. Ca.* 273; but see *Lowndes v. Cornford*, 1 *Rose's B. Ca.* 180; 18 *Ves.* 299, *S. C.*

The plaintiff in a bill of interpleader against persons residing within and without the jurisdiction, after a reasonable time, and having used all reasonable diligence to bring all parties before the court, be decreed to give up the property in dispute to the only defendant within the jurisdiction, and will be protected against the others by injunction: *Stevenson v. Anderson*, 2 *Ves. & B.* 407, and 412, n.

The injunction on an interpleading bill stays *all proceedings*, and may be moved for before the time for answering has expired; *Vicary v. Widger*, 1 *Sim. R.* 15; *Warington v. Wheatstone*, *Jac. Rep.* 205; overruling *Croggon v. Symons*, 3 *Madd. Rep.* 131.

The principle of interpleader is that the defendant who improperly raises the double

of E. to take the tithes of corn grain herbage wool and lambs yearly arising and growing in said parish of S. together with the pew \*in the chancel of the church, and all profit of what kind soever belonging to the said rectory of the said parish (the parsonage house glebe lands and all out-buildings thereunto belonging only excepted,) for the term of six years from Michaelmas-day then last paying the sum of —*l* clear of land-tax and all deductions to be paid in manner following, viz. —*l*. at Lady-day, and —*l*. at Michaelmas-day in every year for the said term of six years, the first payment thereof to commence at Lady-day —.

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That in pursuance of the said agreement, *plaintiff* entered into the possession or receipt of the said tithes, and from time to time paid the said annual rent to defendant J. till the year — when he was informed by defendant J. that he had disposed of his interest in the said tithes so long as he should continue rector of the said parish to defendant E. K., and had given him a power of attorney to receive said rent from *plaintiff*, and that *plaintiff* was to pay defendant K. the rent due at the Michaelmas preceding, and all future rent to grow due from *plaintiff* in respect of the said tithes.

That *plaintiff* duly paid the said rent to defendant E. K. until the expiration of the said term of — and hath since the expiration of the said term hitherto continued in the possession of the said tithes as yearly tenant thereof at the said rent of —*l*.

That soon after the expiration of the said term of — years, defendant E. K. informed *plaintiff* that he had given said tithes to his son the Rev. W. W. K., and that *plaintiff* was in future to pay the said rent to him; and *plaintiff* accordingly from thence until the death of the said W. W. K. which happened in or about the year —, paid the said rent to the said W. W. K. and from and after the decease of said W. W. K. *plaintiff* paid the said rent to H. K. his brother who claimed to be entitled thereto, and also produced to *plaintiff* a letter of attorney from defendant E. K. authorizing him the said H. K. to receive said rent from *plaintiff*.

That in or about —, *plaintiff* received a letter from a Mr. W. as solicitor to the defendant A. stating that said H. K. had by two several indentures dated respectively — granted bargained sold and confirmed unto the said defendant A. two several annuities of —*l*. each during the lives of them the said H. K. and defendant E. K. to be issuing payable out of and chargeable upon the said tithes, (amongst other premises therein mentioned,) and further stating that the last half year's annuity which became due on — had not been paid by the said H. K. and requiring *plaintiff* therefore to pay the defendant A. the rent due from him for the said tithes.

That *plaintiff* in consequence of such letter did on or about — pay the said defendant A. the rent of the said tithes which accrued due between Michaelmas — and Michaelmas —.

claim pays the costs; *Martinius v. Helmuth*, 2 Ves. & B. 412, n. and the cases referred to in note (a), *ibid.*; and the plaintiff has a lien for his costs upon the fund paid into court; *Aldridge v. Mesner*, 6 Ves. 418; *Paris v. Gilham*, Coop. R. 57; but he is not entitled to his costs immediately after replying to the answers and serving subpoenas to rejoin, but must set down the cause for hearing; *Jones v. Gilham*, Coop. 49.

[ \*207 ] That in or about — *plaintiff* received a letter from the said defendant E. K. claiming to be entitled to said tithes and the rent thereof, but defendant A. still insisting upon his right to receive the said rent from *plaintiff*, and *plaintiff* being advised that he could not with safety pay his rent either to the said defendant E. K. or to any other person until it was clearly ascertained to whom it \*belonged, *plaintiff* declined to make any payment to the said defendant E. K.

That in — then last defendant E. K. commenced an action at law against *plaintiff*, to recover from him what was due for the rent of the said tithes, but *plaintiff's* attorney having procured a judge's order that the said defendant E. K.'s attorney should deliver to *plaintiff's* attorney a statement of the said defendant E. K.'s place of abode, and that the proceedings should in the mean time be stayed, such order has never been complied with, and the said action has been discontinued.

That defendant J. the rector of said parish of S. now also claims to be entitled to receive the said rent from *plaintiff*, and hath lately commenced an action against *plaintiff* in the Court of King's Bench for the recovery of the said rent, which is still depending, and the said defendant J. intends to prosecute same.

That on or about — *plaintiff* received a notice in writing, signed by the defendant T. P. as follows: [*requesting plaintiff to pay the rent for the tithes to him, the same having been conveyed to him by deed.*]

That *plaintiff* hath been informed that the deed referred to in the said notice, and under which defendant P. claims to be entitled to receive the rent of the said tithes from *plaintiff* was executed by the said H. K. subsequently to the grant of the aforesaid annuity to the defendant A.

That there is now due from *plaintiff* — years' rent of the said tithes from Michaelmas —, making in the whole the sum of —l., and *plaintiff* is and at all times has been ready and willing to pay the same to whomsoever shall appear to be entitled thereto, but by reason that all the defendants persist in the several adverse claims before mentioned, and threaten and intend to proceed at law against *plaintiff* for the recovery of the said rent, *plaintiff* is advised that he cannot with safety pay the same to any of the defendants, but that they ought to interplead together touching their right to the said rent, in order that *plaintiff* may know to whom the same ought to be paid, and that the said defendants ought to be restrained by the order and injunction of the court, from prosecuting, proceeding in, or commencing any action or actions at law against *plaintiff* for or in respect of the matters aforesaid. To THE END, &c., [*proceed as in form VI. p. 5, and interrogate to the statements in the bill.*]

Prayer.

And that the said defendants may answer the premises; And that they may be decreed to interplead together; and that it may be ascertained in such manner as the court shall direct to which of them the rent of the said tithes belongs and ought to be paid. And that *plaintiff* may be at liberty to pay the rent now due and to grow due from him for and in respect of the said tithes into court, which he offers to



do for the benefit of such of the said parties as shall appear to be entitled thereto. And that the said defendants may in the mean time be restrained from proceeding in prosecuting or commencing any action or actions at law against *plaintiff* in respect of the matters aforesaid. [*And for further relief, see form VIII. p. 5.*] May it please, &c. [*see forms No. 1, and 4, p. 6.*]

J. L.

\*In Chancery.

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Between J. C. . . . Plaintiff,  
and  
— — — — — . . Defendants.

The said J. C. maketh oath and saith, that he has exhibited his bill of interpleader against the defendants in this cause without any fraud or collusion between him and the said defendants or any or either of them ; and that he the said J. C. hath not exhibited his said bill at the request of the said defendants or of any or of either of them, and that he is not indemnified by the said defendants, or by any or either of them, and saith that he has exhibited his said bill with no other intent but to avoid being sued or molested by the said defendants, who are proceeding or threaten to proceed at law against him for the recovery of the rent of the said tithes in the said bill mentioned.

Form of affidavit to be annexed to the bill. (5)

Or thus :

A. B. the above named plaintiff maketh oath and saith that he doth not in any respect collude with either of the above-named defendants touching the matters in question in this cause, nor is he in any manner indemnified by the said defendants or either of them, nor hath he exhibited his said bill of interpleader at the request of them or either of them, but merely of his own free will and to avoid being sued or molested touching the matters contained in his said bill.

A. B.

Sworn, &amp;c.

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LXVI. *Bill of interpleader by the tenants of certain estates against an infant tenant in tail and the devisees in trust and executors under the will of the infant's father, and also against the acting executor under the will of the deceased tenant for life and the*

(5) The plaintiff need not swear that the bill was filed at *his own expense*, or without the *knowledge* of either of the defendants ; in *Dungey v. Angove*, cited *antea*, p. 205, the affidavit stating " that the bill was not exhibited with the consent, knowledge, or combination of either of the defendants " was considered irregular, and as justifying suspicion of collusion ; and see also 1 Madd. Ch. Pr. 175 ; *Stephenson v. Anderson*, 2 Ves. & B. 410 ; affidavits cannot be received in contradiction of the plaintiffs ; S. C.

*trustees under a deed executed by him for the benefit of his creditors, claiming to be entitled to the rent which became due on the quarter day next after the decease of the tenant for life, plaintiffs holding under verbal agreements made with the deceased tenant for life, who had a power to lease by deed.*

Will of the infant's father.

[ \*209 ]

States that T. B. late of, &c. deceased, did when he was of sound and disposing mind memory and understanding duly make and publish his last will and testament bearing date —, which was executed and attested in such manner as by law is required for passing real estates, whereby (amongst other things) he gave and devised, &c. [*devising all his manors messuages, &c. to Lord M. and J. M. (subject to certain annuities.) In trust for J. B. (since deceased) for life, without impeachment of waste—remainder to his first and other sons in tail male—with a power to the person or persons for the time being in possession by indenture under hand and seal, to lease, &c. and appointed the said Lord M. and J. M. (two of the defendants after named) executors of his will.*]

Testator lent money upon mortgage, and brought ejectments and recovered possession.

That part of the residue of the said testator's personal estate consisted of the sum of £—— lent by the said testator to — by way of mortgage on the security of certain estates and premises situate, &c. and that the *mortgagor* of the said mortgaged premises having left the kingdom, ejectments were brought against the tenants of the said mortgaged premises by the said testator T. B. and possession thereof was recovered by him.

His death.

That some time after making the said will, the said testator departed this life without altering or revoking the same, leaving the said J. B. him surviving, and he the said J. B. thereupon under and by virtue of the said will which hath since been established under a decree of this court against the testator's heir at law, entered into the possession and receipt of the said manor hereditaments and premises thereby devised, and also of the said mortgaged premises.

If s will established against his heir.

Tenant for life demised his interest to trustees for the benefit of his creditors.

But the said J. B. being some time afterwards much involved in debt, and being desirous of making a provision for the payment of such debts, did by certain indentures of lease and release bearing date — duly convey all his estate and interest in the said premises situate at —, and also in the said mortgaged premises unto W. L. and T. G. two other defendants, for the term of — years if he should so long live, *upon trust to lease, &c. and manage the estates*, and after paying an annuity of — to the said J. B. to apply the surplus for his creditors.

Death of tenant for life; His will;

That the said J. B. departed this life on or about — having duly made his last will and testament in writing bearing date —, and thereby appointed G. D. (another defendant,) with certain other persons executors thereof, but the said G. D. alone proved the same and acted in the execution thereof, and the said J. B. left J. B.

His eldest son an infant, entitled as tenant in tail.

(another defendant) an infant under the age of twenty-one years, his eldest son him surviving, who thereupon became and now is the first tenant in tail of the said manors lands and hereditaments, and also of the said mortgaged estates and premises, under and by virtue of the limitations contained in the said will of the said T. B., and

the said J. B. being an infant, possession of the several estates and premises was taken by the said trustees named in the will of the said T. B. on his behalf, and a receiver hath been since appointed thereof, under an order made in a cause instituted by the said J. B. the infant, by his next friend.

That the whole of the said manors, &c. together with the said mortgaged premises were let or demised by the said J. B. now deceased, under parol or verbal agreement, in different parts and parcels and at and under different yearly rents to *plaintiffs* as tenants thereof \*respectively from year to year, and the several rents reserved and made payable by *plaintiffs* for the said lands and hereditaments in their respective occupations were paid and payable half-yearly at Lady-day and Michaelmas-day in each year, but no regular leases or demises in writing were made or executed by the said J. B. deceased of any part of the said estates and premises.

That the said G. Earl of M. and J. M. (the trustees under the will of the said testator T. B.) claim to be entitled on behalf of the said J. B. the infant, or the said J. B. the infant in his own right claims to be entitled to the half-year's rent for the said manors, &c. and also for the said mortgaged premises accruing due from the last rent-day preceding the death of the said J. B. and which became due and payable at Lady-day next following the decease of the said J. B. And on the other hand the said W. L. and T. G. as the trustees under the said indentures of lease and release bearing date —, and the said G. D. as the only acting executor and personal representative of the said J. B. deceased insist, that as the said J. B. the tenant for life of the said manors, &c. did not in his life-time execute the power given to him by the will of the said T. B. as aforesaid, by making or executing regular leases and demises of the said estates and premises, but continued to the time of his death to let the said manors, &c. and also the said mortgaged premises to *plaintiffs* respectively by parol agreement only, *plaintiffs* were merely tenants at will or from year to year, and that their right to continue in possession of the estates and premises in their respective occupations, ceased or determined upon the death of the said J. B. and that therefore the growing or current half-year's rent at the time of his the said J. B.'s death, did not wholly belong to the said trustees on behalf of the said J. B. the infant, or to the said J. B. the infant as the next remainder-man entitled to the possession of the said estates and premises under the said will, but that the current half-year's rent which was growing or accruing due in the life-time of the said J. B. from and after the last rent-day preceding his death, ought to be apportioned, and that so much thereof as accrued due in his life-time ought to be considered as part of the personal estate of the said J. B. deceased, and as belonging to them the last-named parties or some or one of them, and that so much thereof only as accrued due after the said J. B.'s death, belonged to the said J. B. the infant as such remainder-man.

That the amount of the said half-yearly rent which became due at Lady-day next following the death of the said J. B. as aforesaid, was due from *plaintiffs* in the following particulars (that is to say) the

Verbal agreements made by plaintiffs with the tenant for life at different rents.

[ \*210 ]

Claim on behalf of the infant to the half-year's rent accruing due on the quarter day after the decease of the tenant for life. And claim set up by his trustees and executor to the proportion of the half-year's rent up to his decease;

And that the remainder only belonged to the infant.

Amount of rent due from the plaintiffs.

Actions commenced  
against plaintiffs  
for the arrears of rent.

[ \*211 ]

Plaintiffs insist that the  
defendants ought to interplead.  
Prayer.

sum of £—— from *plaintiff* J. B., the sum of £—— from *plaintiff* J. S., &c. &c. [*setting out the sum due from each.*] And *plaintiffs* being desirous of paying their said rents to such of the said parties as should be justly entitled to receive the same, were in hopes that they should not have been harassed with any legal proceedings in order to compel the payment of such rents, and that the said parties would have settled their disputes among themselves, as in justice and equity they ought to have done. But that the said W. L. and T. G. the trustees under the said indentures of lease and release bearing date ——, have lately commenced actions at law against *plaintiffs* \*T. K., &c. the tenants of the said mortgaged premises, and they threaten and intend to bring actions against the rest of the *plaintiffs* as tenants of all the other estates and premises, in order to compel the payment of the rents so accrued due as aforesaid. And the said G. Earl of M. and J. M. the trustees named in the said will of the said T. B. and the said J. B. the infant threaten and intend to bring actions at law against all the *plaintiffs* in the name of the said J. B. the infant, in order to compel the *plaintiffs* to pay the said rents to them. And the said G. D. also claims the said rents as the executor and personal representative of the said J. B. deceased. And *plaintiffs* by reason of the said opposite claims, are unable to ascertain with certainty to which of the said parties the said rents do justly and of right belong. And *plaintiffs* being ready and willing to pay the same to whichever of the said parties the same shall be found of right to belong, *plaintiffs* insist that the said several parties ought to interplead and be restrained from proceeding at law against them.

That the said defendants may interplead and settle their rights to the rents so accrued due as aforesaid, under the direction of this honorable court *plaintiffs* being ready and willing to pay the said rents to either of the said parties to whom the same shall appear of right to belong, and hereby offering to bring the same into court for the benefit of such of the said parties as shall appear entitled thereto. And that the said W. L. and T. G. may be restrained by the injunction of this honorable court from prosecuting their said actions so commenced as aforesaid, and that they and all the said other defendants may be restrained from commencing any other actions or proceedings at law against any of the *plaintiffs* in order to compel the payment of the aforesaid rents or any part thereof. [*And for further relief.*]

In Chancery.

Between A. B., &c. [*naming each*] . . Plaintiffs.  
and

——— . . Defendants.

The above-named plaintiffs A. B., &c. [*stating all their names*] severally make oath and say, that they have exhibited their bill, &c. [*vide antea*, p. 208.]

*\*LXVII. Prayer that the defendants may interplead—that plaintiff may be at liberty to pay the arrears of rent into court, first deducting thereout certain sums for repairs and land-tax,—that possession may be delivered to the party entitled, and an allowance made to the plaintiff for certain articles—and for an injunction to restrain proceedings in ejectment and distresses being made upon the premises.*

And that the said several defendants may be decreed to interplead touching their said several claims, and that *plaintiff* may be at liberty [ \*212 ]  
 \*to pay the several sums now justly and fairly due from him for the rent of the said messuage or tenement and premises into the bank, in the name and with the privity of the accountant-general of this honorable court, in trust for the benefit of the persons or person entitled thereto, subject to the further order of this court, after deducting thereout in the first place the aforesaid sum of 36*l.* to be allowed unto *plaintiff* for repairs pursuant to the said agreement, together with all sums of money expended and advanced by *plaintiff* for land-tax and other necessary outgoings in respect of the said premises. And that *plaintiff* may be at liberty to quit the possession of the said premises, and that possession thereof may be delivered up to such person or persons as this honorable court shall direct or appoint. And that *plaintiff* may have a satisfaction or allowance made out unto him out of the rent of the said premises for the several articles hereinbefore and in the said first agreement particularly mentioned, which have been provided by *plaintiff* at his own expense for the said premises. And that in the meantime the said defendants S. O. and T. C. may be restrained by the order or injunction of this honorable court from all further proceedings in the aforesaid action of ejectment brought against *plaintiff*, and that they and all the said other defendants may be in like manner restrained from making any distresses or distress upon the said messuage or tenement and premises, and from commencing or prosecuting any action or actions at law against *plaintiff* to recover the rent of the said premises or to turn *plaintiff* out of possession thereof, or otherwise from proceeding at law against *plaintiff* touching any one of the matters aforesaid. And that all proper and necessary directions may be given for the purposes aforesaid. [And for further relief.]

\*13. BILLS FOR PAYMENT OF LEGACIES ; AND ALSO TO CARRY THE TRUSTS OF WILLS INTO EXECUTION.(1)

LXVIII. *Bill against an executor by the husband of a deceased legatee for payment of her legacy:*(2)

In the Exchequer.

To, &c.

Humbly complaining sheweth unto your honors your orator A. B. of, &c. debtor, &c. [*as in form No. 2, p. 2.*] That W. S. late of, &c. duly made and published his last will and testament in writing bearing date on or about —, and thereby amongst other bequests gave to his nephews and nieces, the children of his late sister M. A. the sum of £—— each to be paid to them as they should respectively attain the age of twenty-one years, and appointed E. T. F. of, &c. the defendant hereinafter named, the sole executor of his said will, As in and by the said will or the probate thereof when produced will appear. And your orator further sheweth unto your honors that the said E. T.

(1) The same marshalling of assets takes place in favor of legatees as in favor of creditors, see note (4), *antea*, p. 128 ; as against assets descended, legatees have the same equity ; thus where lands are subjected to the payment of all debts, a legatee shall stand in the place of a simple contract creditor who has been satisfied out of the personal assets, *Haslewood v. Pope*, 3 P. Wms. 323. So where legacies given by will are charged on the real estate, but not the legacies given by a codicil, the former shall resort to the real assets on a deficiency of such as are personal to pay the whole, *Bligh v. Earl of Darnley*, 2 P. Wms. 619.

A court of equity will not marshal assets in favor of a charitable bequest so as to give it effect out of the personal chattels, it being void so far as it touches any interest in land, *Foster v. Blagden*, Ambl. 704.

Under a devise of real and personal estate in trust to pay debts and legacies, some of which are void under the stat. 9 Geo. 2, c. 36, as a charge of charity legacies upon the real and leasehold estates and money on mortgage, on a deficiency of assets the other legatees were preferred to the heir, *Currie v. Pye*, 17 Ves. 462 ; and see also Toll. Ex. 6th edit. 420, 422.

Where under the will of a widow, her residuary legatees are also appointees of a share of another testator's estate under a power given to her, a bill filed by them for an account and payment of their shares and to carry the trusts of both wills into execution, is not multifarious ; *Turner v. Robinson*, 1 Sim. & Stu. 313.

(2) General residuary legatees are not necessary parties to a bill for a specific legacy ; *Wainwright v. Waterman*, 1 Ves. jun. 313 ; 1 Verm. 261.

As to making the Bank of England parties for the security of a legacy, and also with regard to their costs, see note (1), *postea*, form XCVI.

As to who are necessary parties to a bill by a legatee and appointee under the will of a *feme covert*, see *Court v. Jeffery* and *Manning v. Thesiger*, 1 Sim. & Stu. 105, 6.

After a distribution of assets under a decree ascertaining the rights of legatees, advertisements for all persons interested to come in and prove their claims before the Master having been previously published, a bill by a legatee against the representatives of the executor was dismissed ; *Farrell v. Smith*, 2 Ba. & Be. 337 ; and see *Jackson v. Leaf*, 1 Jac. & W. 229 ; where a court of equity has taken the management of assets from an executor, it will not permit him to be charged for what has been done pursuant to its directions ; 2 Ba. & Be. 342. Legatees are not to be excluded the benefit of a decree to account by not coming in to claim, though creditors are, because they would not be known or ascertained unless they should appear, 9 Price, 210.

\*F. soon after the death of the said testator duly proved the said will in the proper Ecclesiastical Court, and hath since possessed himself of the personal estate and effects of the said testator to an amount much more than sufficient for the payment of his just debts, funeral and testamentary expenses and legacies. And your orator further showeth that after the death of the said testator your orator intermarried with A. A. who was the niece of the said testator and one of the children of the said M. A. in the said will named, and by virtue of such intermarriage your orator in right of his said wife became entitled to demand and receive the aforesaid bequest of £——. And your orator further sheweth that your orator's said wife lived to attain her age of twenty-one years, and that she hath lately departed this life, and that neither your orator nor his said wife received any part of the said legacy. And your orator further sheweth that having obtained letters of administration to his said wife, he hath repeatedly applied to the said E. T. F. for payment of the said legacy and interest thereon from the time of his said late wife attaining her age of twenty-one years, and your orator hoped that such his reasonable requests would have been complied with, as in justice and equity they ought to have been. BUT NOW SO IT IS may it please your honors that the said E. T. F. combining, &c. [*see form IV. p. 5.*] To THE END therefore that, &c. [*see form VI. p. 5, interrogating to the stating and charging part.*]

Marriage of the plaintiff.

Death of plaintiff's wife, and letters of administration granted to plaintiff.

Applications.

And that an account may be taken of what is due and owing to your orator for the principal and interest of the said legacy, and that the said defendant may be decreed to pay the same to your orator; And if the said defendant shall not admit assets of the said testator sufficient to answer the same, then that an account may be taken of the estate and effects of the said testator which have been possessed or received by the said defendant or by any other person by his order or to his use, and that the same may be applied in a due course of administration. [*And for further relief, see form VIII. p. 5.*] May it please your honors, &c. [*see form No. 1, p. 6.*]

Prayer.

J. L.

*Note.*—A husband may, if he thinks fit, give to his wife a disposing power over any property, and it may therefore turn out in this case that the plaintiff has no interest in this legacy, but at all events he has no right of suit without taking out administration to his wife, but it will be sufficient to sustain this bill if he obtain letters of administration any time before the hearing, and it will not be advisable to put himself to that expense until the defendant has put in his answer, so that it may be seen whether it is worth his while to prosecute the suit.

*\*\*LXIX. Bill by husband and wife for payment of a legacy bequeathed to her,—claiming also a share in the testatrix's residuary estate under the bequest thereof in trust for her relations.*

To, &c.

Humbly complaining show unto your lordship your orator and oratrix P. S. of, &c. and M. his wife late M. H. spinster, That J. W. late of, &c. widow deceased, being possessed of very considerable personal estate, did on or about — duly make and publish her last will and testament in writing, and thereby after giving divers other pecuniary legacies gave unto your oratrix by her then name and description of — the sum of £500 to be paid to her at her age of twenty-one years or day of marriage which should first happen. And as to her shop stock in trade and utensils thereunto belonging goods plate and furniture which should be in or about her house at the time of her death, together with her wearing apparel of all sorts, and all and every sum and sums of money debts by specialty or otherwise and all moneys invested in any of the public funds or government securities and all other the residue of her personal estate whereof she should be possessed, interested or entitled to, the said testatrix gave and bequeathed the same to her brother J. L. in trust to pay apply and dispose thereof unto and among every of her relations at such times and in such manner and proportions as he in his discretion should judge most proper without having any regard to the legacies by her thereinbefore specifically given, and the said testatrix nominated and appointed the said J. L. sole executor of her said will. As by the said will or the probate thereof whereunto your orator and oratrix for their greater certainty crave leave to refer when the same shall be produced to this honorable court will appear. And your orator and oratrix further show unto your lordship that on or about — the said testatrix departed this life without altering or revoking her said will, whereupon the said J. L. duly proved the same in the Prerogative Court of the Archbishop of Canterbury and took upon himself the execution thereof, and by virtue thereof possessed himself of all the personal estate and effects of the said testatrix to a very considerable amount and much more than sufficient to answer and satisfy all her just debts, funeral and testamentary expenses and legacies. And your orator and oratrix further show unto your lordship that some time after the decease of the said testatrix (that is to say:) on or about — they your orator and oratrix intermarried together, whereby your orator in right of your oratrix became well entitled to the said legacy of £500. And your orator and oratrix further show that your oratrix is the niece of the said testatrix and your orator in right of your oratrix as such relation, also became entitled to some part share and proportion of the residue of the said testatrix's personal estate so bequeathed to the said J. L. upon trust as aforesaid. And your orator and oratrix are advised that such only of the relations of the said testatrix are entitled to shares in such

The will of the testatrix.

Death of testatrix.  
Probate by defendant.

Marriage of the plaintiffs.

Plaintiff P. S. in right of his wife entitled to legacy of £500, and also to a share of the residuary estate.

[ \*216 ]



residue as are capable of taking under the statutes of distributions of intestate's effects. And your orator and oratrix further show unto your lordship that they have frequently and in a friendly manner applied unto the said J. L. and requested him to pay and satisfy unto your orator the said legacy of £500 together with lawful interest for the same from the time of your orator and oratrix's said marriage, and also to come to a fair and just account for and in respect of the personal estate and effects of the said testatrix which have been received by him the said J. L. or by any other person or persons by his order and for his use, and to pay and apply such personal estate in a course of administration, and to dispose of the clear residue or surplus thereof agreeably to the intention of the said testatrix in and by her said will expressed and declared. And your orator and oratrix well hoped that such their reasonable requests would have been complied with as in justice and equity they ought to have been. BUT NOW SO IT IS, &c. [see form IV. p. 5,] the said J. L. absolutely refuses to comply with such your orator and oratrix's just and reasonable requests aforesaid, sometimes pretending that the said testatrix never made and executed her last will and testament of such date purport and effect as is hereinbefore mentioned and set forth, and that therefore he the said defendant as the only next of kin of the said testatrix is entitled to the whole of her personal estate and effects. Whereas your orator and oratrix expressly charge the contrary of such pretences to be true, and that the said testatrix in her life-time did duly make and execute her last will and testament in writing of such date purport and effect as is hereinbefore mentioned and set forth, and that by virtue thereof your orator is now become well entitled in right of your oratrix to the said legacy of £500, and also to some part share or proportion of the residue of the said personal estate of the said testatrix after payment and satisfaction of her just debts funeral and testamentary expenses and legacies, and so the said defendant at other times admits the truth to be. But then he pretends that the personal estate and effects of the said testatrix which have come to his hands custody or power were very small and inconsiderable and not more than sufficient to answer and satisfy her just debts and funeral and testamentary expenses. Whereas your oratrix and orator expressly charge that the personal estate and effects of the said testatrix which have come to the hands, custody or power of the said defendant are of very considerable value and not only sufficient to answer and satisfy all the just debts legacies and funeral and testamentary expenses of the said testatrix, but also to afford a considerable residue to be applied and disposed of amongst her relations, and so it would appear if the said defendant would set forth a full true and particular account of the said personal estate and of every part thereof, and how and in what manner to whom and for what the same and every part thereof has been applied or disposed of, but which he refuses to do or to make your orator and oratrix any satisfaction whatsoever in respect of their just demands. All which actings, doings and \*pretences, &c. [See form VI. p. 5, *interrogating to the stating and charging parts.*]

Applications.

IV.

Pretence that testatrix never made a will, and that defendant is entitled as her next of kin.

Charge the contrary.

Pretence that the personal estate is insufficient.

Charge the contrary.

[ \*217 ]

And that the said defendant may set forth and discover a full true

Interrogatories for account and application of deceased's personal estate.

and particular account of all and every the personal estate and effects of or belonging to the said testatrix at the time of her death together with the natures kinds quantities qualities true and utmost value thereof, and every part thereof, and how much and what parts of the said personal estate and effects have been received by or come to the hands possession or power of the said defendant or of any other person or persons and whom by name by his order or for his use, and how the same and every part thereof hath been paid, applied or disposed of and administered, and to whom and for and upon what account cause or consideration, and whether any and what part thereof is now remaining to be got in and administered, and where and in whose hands possession or power, and why the same has not been got in and received and what is the amount thereof.

Prayer.

And that the said defendant may be decreed by this honorable court to come to a fair and just account with your orator and oratrix for and in respect of all and singular the personal estate and effects of the said testatrix which have been received by him or by any other person or persons by his order or for his use, or which without his wilful default might have been received, and that the same may be applied in a due course of administration, and that your orator may be fully paid and satisfied the aforesaid legacy of £500 together with lawful interest for the same from the solemnization of your orator and oratrix's said marriage, and that the clear residue of the said testatrix's personal estate may be ascertained, and that it may be declared by this honorable court that such relations only of the said testatrix are entitled to take any shares under the said will in the residue of the said testatrix's personal estate as are capable of taking under the statute of distributions. And that it may be referred to one of the masters of this honorable court to enquire and state what relations the said testatrix left of such description; and that the said defendant may also be decreed to pay and satisfy unto your orator in right of your oratrix such part share and proportion of such clear residue or surplus to which your oratrix shall appear to be justly entitled under and by virtue of the said testatrix's will. [And for further relief, see form VIII. p. 5.] May it please, &c. [See form No. 1, p. 6.]

LXX. *Bill against an executor by legatees and the administrator of a deceased legatee, for payment of their legacies and shares of the residuary personal estate.*

To, &c.

[ \*218 ] Humbly complaining show unto your lordship your orators and oratrix H. K. the elder of, &c. administrator of the goods and chattels \*rights and credits of F. K. late of, &c. deceased, H. K. the younger of, &c., and S. K. an infant under the age of twenty-one years, to wit, about the age of twenty years, by the said H. K. the

elder her father and next friend, That J. R. late of, &c. being possessed of or well entitled unto a considerable personal estate, duly made and published his last will and testament in writing, and a codicil thereunto annexed, the said will bearing date on or about the — day of —, and by his said will amongst other things gave and bequeathed unto your oratrix S. K. the sum of £— to be paid to her at the age of twenty-one years or day of marriage which should first happen. And the said testator also gave and bequeathed unto your orator, H. K. the younger the sum of £— to be paid to him on his attaining his age of twenty-one years. And the said testator after giving divers other legacies, gave and bequeathed unto R. B. (the defendant hereinafter named) and W. R. H. of, &c. and who departed this life in the life-time of the said testator, the rest and residue of his estate and effects in trust to be equally divided between such children of his the said testator's niece H. K. as should be living at the time of his decease, and thereby appointed the said R. B. executor thereof. As in and by the said will or the probate thereof, when produced to this honorable court will appear. And your orators and oratrix further show unto your lordship that the said J. R. departed this life on or about — without revoking or altering his said will save by the said codicil, and without revoking or altering the said codicil or any part thereof; whereupon the said R. B. the executor in the said will named, duly proved the same in the proper Ecclesiastical Court, and undertook the executorship thereof, and possessed himself of the personal estate and effects of the said testator to a very considerable amount, and more than sufficient to discharge his just debts funeral expenses and legacies. And your orators and oratrix further show unto your lordship that the said F. K. in the said testator's will named, and your orator and oratrix H. K. the younger and S. K. were the only children of the said M. K. in the said will named who were living at the time of the death of the said testator, and your orator H. K. the younger became entitled to have and receive his said legacy of £— so bequeathed to him as aforesaid, and also his third part or share of the residue of the personal estate and effects of the said testator after payment of all his just debts legacies and funeral expenses; and your oratrix S. K. is entitled to have her said legacy of £—, and also her third part or share of the said residue secured for her benefit until she shall attain her age of twenty-one years or day of marriage; and your orator H. K. the elder is entitled as such administrator of the said J. K. as aforesaid, to have and receive the remaining third part or share of the said residue. And your orators and oratrix further show unto your lordship that the said F. K. departed this life on or about — intestate, and that since his death your orator the said H. K. the elder has obtained letters of administration of the personal estate and effects of the said F. K. to be granted to him by the proper Ecclesiastical Court. And your orators and oratrix further show unto your lordship that your orator \*H. K. the younger attained the age of twenty-one years on or about —, and your orators and oratrix being so entitled as aforesaid, your orators have made frequent applications to the said R. B. to

Testator's will and a codicil thereto.

His death.

Probate by the executor.

Title of plaintiffs.

[ \*219 ]

- Applications to defendant. pay the said legacy of —l. and the said two-third shares of the said residue; and your oratrix hath also applied to him the said R. B. to lay out and invest her said legacy of —l. and her third share of the said residue upon some proper security for her benefit until she shall attain her age of twenty-one years or day of marriage, with which just and reasonable requests your orators and oratrix well hoped that the said defendant would have complied as in justice and equity he ought to have done. BUT NOW SO IT IS, &c. [*see form IV. p. 5,*] he absolutely refuses so to do, sometimes pretending that the said testator never made any such will as is hereinbefore stated. Whereas your orators and oratrix charge the contrary thereof to be true, and so the said defendant will at other times admit. But then again he pretends that the said testator's personal estate was very small and inconsiderable and not nearly sufficient to pay and satisfy his just debts and funeral expenses. Whereas your orators and oratrix expressly charge that the personal estate and effects of the said testator were much more than sufficient to discharge the said testator's just debts and funeral expenses and legacies: and so it would appear if the said defendant would set forth a full true and particular account of all and every the personal estate and effects of the said testator come to his hands or use, and also a full true and particular account of the manner in which he hath disposed of or applied the same, but which the said defendant refuses to do. All which actings, &c. [*see form VI. p. 5, interrogating to the stating and charging parts.*]
- Pretence that testator never made a will, and that his personal estate was insufficient.
- Charge the contrary.
- Prayer. And that the said defendant may answer the premises; and that an account may be taken of the personal estate and effects of the said testator come to the hands of the said defendant or of any person or persons by his order or for his use, and also of the said testator's funeral expenses debts and legacies; and that the same may be applied in a due course of administration; and that the said defendant may be decreed to pay to your said orator H. K. the younger his said legacy of —l.; and that the clear residue of the said testator's personal estate and effects may be ascertained and that such share thereof as shall appear to belong and be due to your orators respectively may be paid to them respectively, and that your oratrix's said legacy of —l. and also such share of the said residue as she shall appear to be entitled to may be secured for her benefit; and that for those purposes all proper directions may be given. [*And for further relief, see form VIII. p. 5.*] May it please, &c. [*see form No. 1, p. 6.*]

*\*LXXI. Bill on behalf of infant legatees entitled to a sum of stock standing in the names of the executors, praying to have a guardian appointed—maintenance allowed for the time past and to come—an account taken of the dividends retained by the executors, and to have the stock transferred into the Accountant-General's name.(3)*

Humbly complaining show unto your lordship your orators and oratrix E. H. I. H. T. H. and M. A. H. infants under the age of twenty-one years, by I. E. of, &c. their next friend, that E. H. the elder late of, &c. but now deceased, duly made and published his last will and testament in writing bearing date, &c. whereby he directed that W. T. of, &c. and E. B. of, &c. (the defendants herein-after named) and C. G. of, &c. who were the trustees and executors in his said will named should out of the moneys which should come to their hands in manner therein mentioned, lay out and invest in or upon government or real securities at interest the sum of £——, Upon trust, &c. [The trustees were to pay the dividends to E. H. the testator's wife during her life or until her second marriage, and after her decease or second marriage, the whole of the dividends to be applied by the trustees for the maintenance and education of testator's grand-children the plaintiffs, to whom the principal was to be transferred, to the grand-sons at twenty-one and to the grand-daughters at twenty-one or marriage.] As in and by, &c. And your orators and oratrix further show that the said testator departed this life in or about the month of —— without having in any manner revoked or altered the said will, except by a codicil bearing date, &c. which did not relate to or affect the said trusts of the said sum of £——. And your orators and oratrix further show unto your lordship that W. T. and E. B. and the said C. G. duly proved the said testator's will and acted in the trusts thereof, and out of the moneys which came to their hands from the estate and effects of the said testator in or about, &c. appropriated the sum of £—— in satisfaction of the aforesaid legacy in the purchase of the sum of £—— 3 per cent. consolidated bank annuities, and the said sum of stock is now standing in their names in the books of the governor and company of the Bank of England. And your orator and oratrix further show unto your lordship that the said C. G. hath departed this life, and that the said E. H. on or about, &c. intermarried with and is now the wife of the said I. E. whereupon the interest of the said E. H. in the said sum of £—— 3 per cent. consolidated bank annuities wholly ceased. And your orators and oratrix further show that the said defendants paid to the said I. E. and E. his wife the year's dividends which became due on the said sum of stock on the —— day of —— as well for the interest

Testator's will.

His death.

Probate by the executors.

Legacy invested in stock standing in their names.

Death of an executor.

Marriage of testator's widow, whereupon her interest in the dividends ceased.

(3) Since the stat. 36 Geo. 3, c. 52, s. 32 (explained and amended by the 37 Geo. 3, c. 135.) bills by infants for payment of their legacies have been rendered unnecessary, as under the first-mentioned act the executor may pay the legacy into court, and the infant when of age may petition for it; see *Wopham v. Wingfield*, 4 Ves. 630; *Wilson v. Brownsmith*, 9 Ves. 180; Beames on Costs, p. 14; 2 Madd. Ch. Pr. 111; Toll. Ex. 317.

Executors have retained the dividends since the last payment to the widow. Charge that a guardian ought to be appointed and allowance made for maintenance for the time past and to come.

Prayer.

\*of the said E. E. in the said stock as for the maintenance and education of your orators and oratrix up to that time; but the said defendants have retained in their hands the subsequent dividends which have accrued due on the said stock, and have made no payments or allowances thereout for the maintenance or education of your orators and oratrix. And your orators and oratrix further show that some proper person or persons ought to be appointed as the guardian or guardians of your orators and oratrix, with suitable allowances for their maintenance and education for the time past since the said — day of —, and for the time to come, and that the said sum of stock ought to be secured in this honorable court. TO THE END therefore that, &c. [*see form VI. p. 5, interrogating to the stating parts.*]

And that the said defendants may answer the premises; and that some proper person or persons may be appointed the guardian or guardians of your orators and oratrix with suitable allowances for their maintenance and education for the time past since the said — day of — and for the time to come, and that the said defendants may account for the dividends of the said trust stock which have accrued due since the said — day of —, and may thereout pay the allowances which shall be made for the maintenance and education of your orators and oratrix since the said — day of —, and may pay the residue thereof into this honorable court for the benefit of your orators and oratrix; and may also transfer the said sum of £ — 3 per cent. consolidated bank annuities into the name of the accountant-general of this honorable court to be there secured for the benefit of your orators and oratrix, and such other persons as may eventually be interested therein. [*And for further relief, see form VIII. p. 5.*] May it please, &c. [*see form No. 1, p. 6.*]

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LXXII. *Bill on behalf of an infant and only child against the executor of her father's will, who was also her guardian under the will and administrator to her mother—praying to have the trusts of her father's will carried into execution, and an account taken of his personal estate debts and legacies, and of the rents and produce of his freehold estates, and of his shares in certain collieries—praying also that an account may be taken of the personal estate and debts of the infant's mother, and to have the testator's residuary estate secured for the benefit of the infant,—a receiver appointed, and an allowance made for the maintenance of the infant,—(she being also entitled as tenant in tail to certain estates under her parent's marriage settlement, and under the will of her grandfather.)*

To, &c.

Statement of  
the property to  
which the in-

Humbly complaining sheweth unto your lordship your oratrix A. W. an infant under the age of twenty-one years, that is to say, of the age of nine years or thereabouts, by T. W. of, &c. her uncle

and next friend, That A. W. late of, &c. but now deceased, the \*father of your oratrix, was at the time of making his said will and at his death, seised in fee-simple of or otherwise well entitled to — part or share of and in a certain colliery or coal-mine, in, &c. called — colliery, and also to — part or share of and in a certain colliery, or coal-mine in the county of D. called — colliery, and was also possessed of one undivided moiety of a certain brewery malting and lands situate at, &c. held by lease from the dean and chapter of D. for a term of — years, and was also possessed of farming stock and other personal property to a great amount. And your oratrix further sheweth unto your lordship that on or about, &c. the said A. W. duly made and published his last will and testament in writing which was executed and attested in such manner as by law is required for passing real estates, and was in the words and figures or to the purport and effect following: [*Gave to his wife J. W. his liquors and furniture for life she signing an inventory. Gave all his colliers and all other his estate, to defendant R. S. in trust for his children, if more than one, equally, and if but one to such one, chargeable with three annuities of —l. to his wife, —l. to his sister M. B. and —l. to J. W. son of G. W. and appointed said R. S. sole executor and guardian of plaintiff in case of his wife's death or second marriage.*] And your oratrix further sheweth unto your lordship that the said A. W. departed this life on or about — without having in any manner revoked or altered his said will, leaving J. W. in the said will named his widow, and your oratrix his only child him surviving, and thereupon the said R. S. of, &c. one of the defendants hereto and the sole executor in his said will named, duly proved the said will in the proper Ecclesiastical Court, and took upon himself the executorship thereof. And your oratrix further sheweth that the said J. W. the widow of the said testator and mother of your oratrix departed this life intestate on or about, &c. leaving your oratrix her only child and sole next of kin; and letters of administration of her goods chattels rights and credits have since been duly granted to the said R. S. who hath thereby become her legal personal representative. And your oratrix further sheweth unto your lordship that by indentures of lease and release bearing date, &c. and made or expressed to be made between R. W. the late grandfather of your oratrix of the first part, the said T. W. and J. H. of, &c. another defendant hereto of the second part, the said testator A. W. of the third part, the said J. W. the wife of the said A. W. of the fourth part, G. W. of, &c. and W. G. of, &c. two other defendants hereto of the fifth part, the said defendant R. S. of the sixth part, and T. B., &c. of the seventh part, one undivided moiety or half part and share of and in a certain messuage tenement and lands, &c. [*describing the premises*] were conveyed and assured to the said G. W. and W. G. their heirs and assigns, in such manner that the said A. W. and J. his wife during their joint lives were each entitled to one moiety of the rents and profits of the said premises, and that the said J. W. became entitled to the entirety of such rents and profits upon the death of the said A. W. for and during the term of her life; and that your oratrix is now by the events that have happened

fant's father  
was entitled.

[ \*222 ]

His will;

and death.

Probate by  
the executor.

Death of the  
widow, leav-  
ing the infant  
her next of  
kin.

Administra-  
tion granted  
to the testa-  
tor's executor.

Settlement on  
the marriage  
of the parents  
of the infant;

Infant entitled

as tenant in  
tail under it.

[ \*223 ]

Will of her  
grandfather;

Infant entitled  
as tenant in  
tail under it.

The executor  
possessed  
himself of the  
testator's per-  
sonal estate  
and of the  
rents and pro-  
duce of his  
real and lease-  
hold estates  
and collieries;

Also of the  
personal es-  
tate of the in-  
fant's mother.

Annuity to the  
mother not  
paid.

That the  
trusts of the  
will ought to  
be performed.

That R. S.  
ought to ac-  
count for the  
personal es-  
tate of plain-  
tiff's parents  
and the rents  
and profits of  
the real and  
leasehold es-  
tates and col-  
lieries.

That a receiv-  
er ought to be

tenant in tail in possession of the said premises; but the said G. W. \*and W. G. now have or claim some legal estate therein, in trust how-  
ever for your oratrix. And your oratrix further sheweth unto your  
lordship that the said R. W. the father of the said A. W. by his last  
will and testament gave devised and appointed all his copyhold  
messuages lands tenements and hereditaments, &c. unto the said R. S.  
and J. H. their heirs and assigns forever in such manner that the  
said A. W. was entitled to and enjoyed the rents and profits of the  
said premises for and during the term of his life, and that your  
oratrix in the events that have happened has become tenant in tail in  
possession thereof. And the said testator R. W. also gave and de-  
vised all his leasehold messuages lands and premises, &c. [to go with  
the freehold as far as the rules of law would admit.] And your  
oratrix further sheweth that the said R. S. and J. H. now have or  
claim some legal estate or interest of in and to the said freehold  
copyhold and leasehold premises, in trust however for your oratrix.  
And your oratrix further sheweth unto your lordship that the said  
R. S. hath possessed the personal estate and effects of the said tes-  
tator A. W. to an amount greatly more than sufficient to pay and  
satisfy his funeral expenses debts and legacies; and the said R. S.  
since the death of the said testator, hath received very considerable  
sums of money from the profits and produce of the said testator's  
share and interest in the — and — collieries and in the brewery  
malting and lands at H. S.; and the said R. S. upon the death of  
the said testator entered into the possession or receipt of the rents  
and profits of the premises comprised in the aforesaid indentures  
of —, and of the freehold copyhold and leasehold premises de-  
vised as aforesaid by the said A. W.; and the said R. S. hath ever  
since continued and now continues in such possession or receipt.  
And your orator further sheweth that the said R. S. hath since the  
death of the said J. W. your oratrix's mother possessed himself of the  
wine and other liquors which were in the house of the said testator  
A. W. at the time of his decease, and of all other the property and  
effects specifically bequeathed to the said J. W. And the said R. S.  
never paid over to the said J. W. the proportion of the annuity which  
became due to her under the will of her said late husband, nor  
the rents which were due to her in respect of the premises comprised  
in the said indentures of —. And your oratrix further sheweth  
that the trusts of the said will of the said testator A. W. ought to  
be performed and carried into execution; and that the said R. S.  
ought to account for the personal estate and effects of the said tes-  
tator, and for the rents and profits of his real estate, and also for  
the personal estate and effects of the said J. W. And that some  
proper person ought to be appointed to receive the rents profits and  
produce of the said freehold copyhold and leasehold estates and of  
the said testator's share and interest in the said collieries or coal  
mines, and that a suitable allowance ought to be made for the main-  
tenance and education of your oratrix for the time past and to come.  
To THE END therefore, &c. [see form VI. p. 5, interrogating to the  
statements.]

And that the said defendants may answer the premises. And that



the will of the said testator A. W. may be established, and the trusts \*thereof performed and carried into execution by and under the direction of this honorable court. And that an account may be taken of the personal estate and effects of the said testator which have been possessed or received by the said R. S. or by any other person or persons or by his order or to his use; and that an account may also be taken of the said testator's funeral expenses debts and legacies, and that the said testator's personal estate may be applied in payment thereof in a due course of administration. And that an account may be taken of the rents profits and produce of the said testator's freehold copyhold and leasehold estates, and of his share and interest in the said collieries which have accrued due since the death of the said testator, and have been possessed or received by or by the order or to the use of the said R. S. And that an account may also be taken of the estate and effects of the said J. W. which have come to the hands or use of the said R. S. and of her funeral expenses and debts. And that the surplus of the personal estate of the said testator and the rents profits and produce of his freehold copyhold and leasehold estates and coal mines received by the said R. S., and the residuary estate if any of the said J. W. may be secured in this honorable court for the benefit of your oratrix. And that some proper person may be appointed by this honorable court to receive the rents profits and produce of the said freehold copyhold and leasehold estates and collieries. And that suitable allowance may be made for the maintenance and education of your oratrix for the time past and to come. [And for further relief, see form VIII. p. 5.] May it please, &c. [see form No. 1, p. 6.]

appointed and  
an allowance  
made for  
plaintiff's  
maintenance.  
[ \*224 ]  
Prayer.

J. L.

*Pray subpoena against R. S.  
J. H. G. W. and W. G.*

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LXXIII. *Bill by legatees for payment of their legacies, and to carry the trusts of the will into execution, and to have the residuary estate ascertained ;(4)—Praying a declaration that the defendants the co-heirs at law of the testator by claiming and taking a copyhold estate which had not been surrendered to the use of the will, although intended to pass thereby, had forfeited all benefit under the will.*

Humbly complaining show unto your lordship your oratrixes J. W. C. W. and S. W. infant children of S. W. of, &c. under the age of twenty-one years, by the said S. W. their father and next friend, and A. H. M. of, &c. spinster, That T. F. late of, &c. was at the

(4) Where a real estate is devised, charged with legacies, one of the legatees cannot sustain a bill on behalf of himself and all the other legatees; for though it is an established rule that legatees out of personal estate only, need not be parties, yet every person claiming an interest out of real estate must be before the court; *Morse v. Sadler*, 1 Cox, 352.

[ \*225 ] time, &c. [*stating that testator was seised of real estates, and also \*entitled to large personal estate, his will, and a codicil thereto, his death without altering the same, and probate thereof by his executors.*] And your oratrixes further show unto your lordship that

Testator's death, without having surrendered a copyhold estate, which his heirs at law claimed, and entered into possession.

Trustees entered into possession of testator's real estate, and sold the same; the produce of the real and personal estate more than sufficient to pay testator's debts, &c.

Statement of the rights of the plaintiffs.

Application to defendants.

the said testator was in his life-time and at the time of his death (amongst other freehold and copyhold estates) seised to him and his heirs according to the custom of the manor of W. of and in a copyhold estate, consisting of, &c.; and that the said testator departed this life without having first surrendered the said copyhold estate to the use of his said will, by reason whereof the said W. M. the said executor and trustee and the said R. M. and N. M. in the said will named upon or soon after the death of the said testator claimed the said copyhold premises as having descended to them as the co-heirs at law of the said testator, and entered into possession thereof for their own use and benefit. And your oratrixes further show unto your lordship, that the said W. M. R. M. and N. M. as such trustees as aforesaid, have, since the death of the said testator, entered into possession of all other the said testator's freehold estates, and have proceeded to a sale thereof or the greatest part thereof, and have received the purchase-money arising therefrom, which, together with the personal estate and effects of the said testator possessed by them, amount to a very large sum, and much more than sufficient to pay and discharge the said testator's just debts, funeral expenses and legacies. And your oratrixes further show unto your lordship, that the said R. M. was at the time of the making of the said will and of the death of the said testator, married unto A. M. one of the defendants hereinafter named, but that the said R. M. hath not, nor had at the time of the death of the said testator, any children or child, and that the said N. M. was at the time of the making of the said will and at the death of the said testator and now is unmarried and without children. And your oratrixes further show unto your lordship, that your oratrix A. H. M. is entitled to have and receive of and from the said trustees the said sum of £——, which in and by the said will is directed to be by them invested in the purchase of three per cent. Consolidated Bank Annuities, and to be applied for her use and benefit in manner in the said will mentioned, and is also entitled to have one-third part or share of the residue of the real and personal estate of the said testator invested and secured for her benefit, pursuant to the directions of the said will; and that your oratrixes J. W. C. W. and S. W. are entitled to have the said sum of £—— in the said will mentioned, and also two-third parts or shares of the residue of the real and personal estate of said testator invested and secured for their benefit respectively, pursuant to the directions of the said will; And your oratrixes being so entitled as aforesaid, have caused many applications to be made to the said trustees and executors, and have requested them to come to a just and fair account with your oratrixes for the personal estate and effects whereof the said testator died possessed and of the produce thereof and of the moneys arising therefrom, and of the rents and profits and purchase-moneys of his real estates received by or for the use of the said trustees and executors, and to pay to your

oratrix A. H. M. her said legacy of £——, and that the clear residue \*of said testator's estate might be ascertained and placed out and secured for the benefit of your oratrixes as they are respectively entitled thereto, pursuant to the said will, and that the trusts of the said will might be carried into execution; with which just and reasonable requests your oratrixes well hoped that the said defendants would have complied, as in justice and equity they ought to have done. BUT NOW SO IT IS, &c. [see form IV. p. 5.] *Pretence that no will was made, and that the personal estate was insufficient; [Charge the contrary, ut antea, p. 219.]* And the said W. M. R. M. and N. M. who pretend to be the said testator's co-heirs at law, sometimes pretend that the said will was not so executed and attested as to pass freehold estates of inheritance, and that the said testator's real estates did not pass thereby, but descended to them as testator's heirs at law, and they threaten that they will dispute the validity of the said testator's will; and at other times the said defendants will admit the validity of the said defendant's will, but then they together with the said A. M. pretend, that notwithstanding they the said W. M. R. M. and N. M. claiming as the co-heirs at law of the said testator did enter into and upon the aforesaid copyhold estate which the said testator had not surrendered to the use of his will, and did claim and take the same to and for their own use and benefit, yet that the said defendants W. M. R. M. A. M. and N. M. are nevertheless respectively entitled to the several legacies and provisions which the said testator intended them by his said will; Whereas your oratrixes charge that forasmuch as it appears by the said will to have been the manifest intention of the said testator, that the said copyhold estate, though not in fact surrendered, should pass to the uses of his said will, the said W. M. R. M. and N. M. by claiming and taking the said copyhold estate to and for their own use, and thereby defeating the intention of the said testator, have forfeited all benefit and advantage which the said testator by his said will intended to or in favor of them or either of them or their wives or children. And your oratrixes further charge that the said W. M. I. M. and O. C. threaten and intend to pay or secure to or in favor of the said R. M. A. M. and N. M. and also to the said W. M. all and every the legacies and benefits by the said will intended them. All which actings, &c. [see form VI. p. 5, *interrogating to the stating and charging parts.*]

[ \*226 ]

Pretence that the will was not duly executed, and that the real estates descended to the heirs at law.

Charge that the defendants, the co-heirs at law, by claiming and taking the unsundered copyhold estate, have forfeited all benefits under the will.

And that the said will and codicil of the said testator may be established and the trusts thereof performed and carried into execution; and that the said W. M. R. M. and N. M. the co-heirs at law of the said testator, by claiming and taking to and for their own use and benefit as aforesaid the copyhold estate which the said testator had not surrendered to the use of his will, may be declared to have forfeited the several legacies and provisions which by the said will were intended them. And that an account may be taken of the personal estate and effects of the said testator, and of the rents and profits of his real estates, and of the moneys arising from the sale thereof which have come to the hands of the said executors and trustees or any of them, or to the hands of any other person

Prayer.

[ \*227 ] or persons by their or any of their order or for their or any of \*their use; and also an account of the said testator's debts legacies and funeral expenses; and that such personal estate may be applied in a due course of administration, and in particular that the aforesaid legacy of £—— may be decreed to be paid to your oratrix A. H. M.; and that the clear residue of the said testator's estate and effects may be ascertained, and together with the said sum of £—— in the said will given to your oratrix J. W. during her life may be placed out and secured for the benefit of your oratrixes, according to their several and respective rights and interests therein, pursuant and agreeably to the trusts of the said will; and that for those purposes all proper directions may be given. [*And for further relief, see form VIII. p. 5.*] May it please, &c. [*see form No. 1, p. 6.*]

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LXXIV. *Bill by legatees entitled to the testator's residuary estate in fifths, against the executors and trustees of the will;—Praying to have the trust of the will carried into execution, the accounts taken of the personal estate, debts, &c. and the rents of the real estate;—that the estates remaining unsold may be sold under the direction of the court, and that the trustees may be charged with the losses occasioned by their not investing the produce of certain estates sold by them according to the trusts of the will;—that the clear residuary estate may be ascertained and secured, and that the widow may sign an inventory of the furniture bequeathed for her use during her life.*

Humbly complaining show unto your lordship your orators and oratrixes J. A. of, &c. S. P. of, &c. widow, E. U. of, &c. spinster, R. A. of, &c. widow, and G. T. W. of, &c. and A. his wife, That K. A. late of, &c. duly made and published his last will and testament in writing bearing date, &c. which was executed and attested as by law is required for passing real estates by devise, and thereby, after giving two pecuniary legacies, the said testator gave devised and bequeathed all his estates and effects as well real as personal whatsoever and wheresoever and of what nature kind or quality soever unto his brother your orator J. A. and his friends W. U. of, &c. and W. H. of, &c. and S. S. of, &c. two of the defendants hereinafter named their heirs executors administrators and assigns [*upon trust to sell all his real estate, and in so doing to give a preference to his relations, and out of the produce to pay debts and legacies, &c. and to invest —l., to be payable to his niece A. U. at twenty-one or marriage, who afterwards died in testator's life-time, to pay his wife an annuity of —l. and as to —l. for such persons as his wife should appoint; and as to the remainder one-fifth to his nephew J. A. another defendant, and S. P. the children of his brother R. A.; one-fifth to his nieces, plaintiffs, E. U. and R. A. and A. U.; who died in testator's life-time; one-fifth to plaintiff J. A.; one-fifth to the children of his brother R. A., and the re-*

maining fifth part to the children of his sister M. then the \*wife of W. N.] And your orators and oratrixes further show unto your lordship that the said testator afterwards duly made and published a codicil in writing to his will bearing date &c. and executed, &c. and thereby after reciting, &c., [*appointed J. R. of, &c. J. K. of, &c. two other defendants, and his wife S. A., executors instead of those mentioned in said will; and stating that he had purchased some lands, directed them to be sold to pay debts and legacies, &c. and the overplus to be placed out at interest and gave to his wife the interest thereof and the use of the furniture, and cows and horses for her life, and after her decease the principal to be paid to his nephews and nieces as directed by the will.*] As in and by, &c. And your orator and oratrixes further show unto your lordship that the said testator K. A. departed this life on or about — without issue, and without having altered or revoked his said will other than by the said codicil, and without having altered or revoked his said codicil, leaving his nephew the said J. A. one of the defendants hereinafter named, who was the only son of the said R. A. the elder brother of the said testator, his heir at law; and thereupon the said S. A. the widow of the said testator, another defendant hereinafter named, and the said J. R. and J. K. the executrix and executors in the said codicil named, duly proved the said will and codicil in the proper Ecclesiastical Court and undertook the executorship thereof, and by virtue thereof possessed themselves of the personal estate and effects of the said testator to an amount and value much more than sufficient to pay and satisfy his funeral expenses just debts and legacies; and the said S. A. J. R. and J. K. also entered into the possession of the freehold and leasehold estates of the said testator, or into the receipt of the rents and profits thereof. And your orators and oratrixes further show unto your lordship that your orator J. A. hath not nor had at the death of the said testator any child and that your oratrix A. W. was at the death of the said testator the only surviving child of the said testator's brother R. A. and as such is sole legatee of one-fifth of the said testator's residuary estate; and that W. N. the younger who survived the said testator but is since dead, and T. N. of, &c. another defendant hereinafter named, were at the death of the said testator the only surviving children of the said testator's sister M. and as such were legatees as tenants in common of one other fifth part of the said testator's said residuary estate. And your orators and oratrixes further show that the said W. N. the younger had before his death attained his age of twenty-one years, and that he duly made and published his last will and testament in writing and thereby appointed his said brother, the said defendant T. N., and J. H. of, &c. and S. H. of, &c. two other of the defendants hereinafter named the executors thereof, who have duly proved the same in the proper Ecclesiastical Court, and are thereby become the legal personal representatives of the said W. N. And your orators and oratrixes further show that the said A. U. afterwards A. L. one of the nieces of the said testator, having died in his life-time, the one-third of one-fifth part of the said testator's said residuary estate bequeathed to her as aforesaid

[ \*228 ]

Codicil.

Death of testator leaving J. A. his heir at law.

Probate by the executrix and executors.

Title of plaintiffs.

That one-third of one-fifth of the residuary estate lapsed, and

became devise-  
able amongst  
the next of kin  
of the testator.

[ \*229 ]

Applications  
to defendants  
the executrix  
and executors.

Pretence that  
the personal  
estate is in-  
sufficient, and  
that the rents  
have been ap-  
plied in aid of  
the personal  
estate.

Charge that  
the personal  
estate was am-  
ply sufficient.

That the de-  
fendants have  
sold testator's  
freehold and  
leasehold es-  
tates, and that  
but for their  
default a large  
surplus might  
have been in-  
vested upon  
the trust of  
the will.

That testator  
died seised of  
a certain mes-  
suage, &c.,  
which the de-  
fendants have  
sold at less  
than its real  
value, under  
pretence of a  
verbal agree-  
ment made in  
testator's life-  
time.

That the pur-

became lapsed. And your orators and oratrixes further show that your orators and oratrixes except your orator G. T. W. are the next \*of kin of the said testator, and were with the said W. N. the younger deceased and the said defendants J. A. the younger and T. N. the only next of kin of the said testator at his death, and are together with the said S. A. the widow of the said testator, entitled to divide the said lapsed legacy amongst them, according to the proportions specified in the statute of distributions. And your orators and oratrixes further show that your orator J. A. hath on their part in a friendly manner repeatedly applied to the said defendants S. A. J. R. and J. K. and hath requested them to come to a true and just account of their receipts and payments as executrix and executors, and in the trusts of the said testator's will, and to lay out and invest the said testator's residuary estate upon proper security, particularly in the public or government funds, for the benefit of all parties interested therein; and your orators and oratrixes well hoped that the said S. A. J. R. and J. K. would have complied with such your orators' and oratrixes' reasonable requests, as in justice and equity they ought to have done. BUT NOW SO IT IS, &c. [see form IV. p. 5,] they refuse so to do. And the said defendants sometimes pretend that the personal estate and effects of the said testator were small and inconsiderable and not sufficient to pay and satisfy his funeral expenses and just debts, and that they have been obliged to apply the rents profits and produce of the real estate of the said testator in aid of his personal estate in payment of his funeral expenses debts and legacies. Whereas your orators and oratrix charge that the personal estate of the said testator was much more than sufficient for payment of his funeral expenses debts and legacies, and that so it would appear if the said defendants would set forth as they ought to do a just and true account thereof, and of their application thereof; and your orators and oratrix further charge that the freehold and leasehold estates of the said testator or some of them have been sold by the said defendants, and that a very large sum of money but for the default and neglect of the said defendants might have been produced therefrom, and invested upon the trusts of the said testator's will to the great advantage of the residuary legatees who are ultimately to divide the capital of the said residue; and your orators and oratrix charge that the said testator died seised among other estates of a certain messuage tenement or farm called, &c. and that the said defendants under the pretence of some verbal agreement made by the testator in his life-time, but which was in no manner binding upon them, have sold the said messuage or tenement and farm at considerably less than its real value, or what the same would have produced at a public sale, and instead of laying out and investing the purchase-money in such manner as should be most for the advantage of the residuary legatees, defendants have permitted the purchase-money or the greatest part thereof to remain in the hands of the purchaser on his personal security, and defendants have sold other parts of the real estates of said testator by auction, particularly a part of his estate at, &c. in a very improper and incautious manner, and have in like manner neglected to get in lay out and invest the produce

thereof as should be most advantageous for the residuary legatees, and have permitted the same or the greater part thereof to remain on mortgage of the estate so \*sold as last aforesaid, and in such several sales have neglected to give a preference to the relations of the said testator pursuant to the directions in his said will for that purpose. [ \*230 ]

And your orators and oratrix further charge that the said defendant J. A. pretends that the said will and codicil of the said intestate were not executed and attested so as to pass real estates by devise, and that he is therefore entitled to the real estate of the said testator as his heir at law. Whereas your orators and oratrix charge the contrary thereof to be true. And your orators and oratrix further charge that the said defendants, W. N. the elder, W. H. and J. O. who with your orator J. A. are the surviving trustees and devisees named in the will of the said testator, claim to have some legal estates or interest in the freehold property of the said testator, under and by virtue of his said will. And your orators and oratrix charge that the said defendant S. A. ought to have made out and signed and should now make out and sign upon oath, and deposit with one of the masters of this honorable court for the benefit of all persons interested an inventory of the horses cows and furniture which she claims to have the use of for life under the said will and codicil of the said testator. All which actings, &c. [see form VI. p. 5, interrogating to the stating and charging parts.]

And that the said defendant may answer the premises; and that the said will of the said testator may be decreed to be well proved and the trust thereof performed and carried into execution; and that an account be taken of the personal estate and effects of the said testator which have come to the hands or use of the said defendants S. A. J. R. and J. K. or either of them; and that an account may also be taken of the rents profits and produce of the real estates of the said testator which have come to the hands or use of the said defendants or either of them, or but for their wilful default or neglect might have been received by them some or one of them. And that the estate of the said testator (if any) remaining unsold, may forthwith be sold by and under the direction of this honorable court, and that all proper parties may be decreed to join in such sales; and that the said defendants may be made answerable for such loss or losses as shall appear to have been sustained to the prejudice of the said testator's residuary estate, by reason of the said defendants having refused or neglected to lay out and invest the moneys produced by sale of the said testator's estates as hereinbefore mentioned, according to the trusts of the said testator's will and codicil; and that an account may be taken of such loss. And that an account may also be taken of the funeral expenses debts and legacies of the said testator, and that the same may be duly paid. And that the clear residuary estate of the said testator may be ascertained and secured by this honorable court for the benefit of all persons interested therein. And that the said defendant S. A. may sign and deposit with one of the masters of this honorable court an inventory of the horses cows and furniture which she claims to be entitled to

chase-money has remained on the purchaser's personal security.

That the defendants have sold other parts in an improper manner, and neglected to invest the produce, or to give the preference to testator's relations as directed in his will.

Pretence by the heir at law that the will was not duly executed.

Charge the contrary.

Charge as to the claims of certain defendants.

Charge that the widow ought to make out an inventory of the furniture bequeathed to her for her life. Prayer.

for her life under the said testator's will and codicil. [*And for further relief, see form VIII. p. 5.*] May it please, &c. [*See form No. 1, p. 6.*]

J. L.

[\*231] \*LXXV. *Bill by an executor and trustee under a will to carry the trusts thereof into execution.*

In Chancery.

To, &c.

Humbly complaining sheweth unto your lordship your orator C. R. of, &c. executor of the will and codicils of M. S. late of, &c. deceased, and also a trustee devisee and legatee named in the said will and codicils, That the said M. S. at the several times of making her will and codicils hereinafter mentioned, and at the time of her death was seised or entitled in fee-simple of or to divers messuages lands tenements and hereditaments of considerable yearly value in the several counties of C. and D. and being so seised or entitled and also possessed of considerable personal estate, the said M. S. on or about — made her last will and testament in writing, and which was duly signed and published by her and attested in such manner as by law is required for devising real estates, and thereby after giving divers pecuniary und specific legacies and divers annuities, the said testatrix gave and devised unto your orator all, &c. [*stating the substance of the will.*] And the said testatrix afterwards on or about — made a codicil to her said will which was duly signed and published by her and attested as by law is required for devising real estates, and thereby gave, &c. and in all other respects she thereby confirmed her said will and all other codicils by her theretofore made. As by the said will and the said several codicils thereto or the probate thereof to which your orator craves leave to refer when produced will appear. And your orator further sheweth unto your lordship that the said testatrix M. S. departed this life on or about — without having revoked or altered her said will and codicils, save as such will is revoked or altered by the said codicils, and as some of the said codicils have been revoked or altered by some or one of such subsequent codicils; and the said testatrix at her death left the said E. G. formerly E. S. and the said B. S. her cousins and co-heiresses at law. And your orator being by the said codicil of the — day of — appointed sole executor of the said will and codicils hath since her death duly proved the said will and codicils in the proper Ecclesiastical Court, and taken upon himself the execution thereof. And your orator further sheweth unto your lordship that the said testatrix at the time of her death was possessed of interested in and entitled unto considerable personal estate and effects, and (amongst other things) she was entitled to an eighth share and interest in a certain co-partnership trade or business of a tin-blower and tin-melter which was carried on by the said testatrix

Testatrix seised of large freehold and personal estate.

Will of the testatrix.

Codicils.

Death of testatrix, leaving E. G. and B. S. his co-heiresses.

Probate by plaintiff.

Testatrix possessed of a large personal estate, and of her share in a partnership trade.



and certain other persons at — under the firm of S. F. and Co. in which the said testatrix had some share of the capital, and which was a profitable business, and by the articles of co-partnership under which the said business was \*carried on your orator as the said testatrix's personal representative is now entitled to be concerned in such share of the said business for the benefit of the said testatrix's estate; and she was also possessed of or entitled to certain leasehold estates held by her for the remainder of certain long terms of years determinable on lives. And your orator further sheweth that he hath possessed himself of some parts of the said testatrix's personal estate, and hath discharged her funeral expenses and some of her debts and legacies, and your orator hath also so far as he hath been able entered into possession of the said testatrix's estates which she was seised of or entitled to at the times when she made her said will and codicils, and which consisted of, &c. being all together of the yearly value of £—— or thereabouts, besides the said mansion-house, and besides the premises which by the said codicil dated the —— day of —— are devised to your orator for his own use and benefit; and your orator is desirous of applying the said testatrix's personal estate and effects (not specifically bequeathed) in payment of the said testatrix's debts, and of her legacies now remaining unpaid, and of the annuities bequeathed by the said will and codicils, so far as the same will extend, and of paying the remainder thereof out of the rents and profits of the said real estates, and of applying the whole of the said rents and profits according to the directions of the said will and codicils, as in justice and equity ought to be the case. BUT NOW SO IT IS may it please your lordship that the said J. G. and E. his wife, B. S. and J. S. G. in concert with each other make various objections to your orator's applying the said personal estate and the rents and profits of the said real estate, according to the directions of the said will and codicils; And the said J. G. and E. his wife, and B. S. sometimes allege that neither the said will nor any of the said codicils was or were duly executed and attested so as to pass real estates, and that the said testatrix was not of sound and disposing mind memory and understanding at the several and respective times when she executed the said will and codicils. Whereas your orator charges the contrary of such pretences to be true, and that the said testatrix's real estates were well devised by the said will and codicils in manner hereinbefore stated; And the said defendants J. G. and E. his wife sometimes pretend that by virtue of the said testatrix's will they are entitled to the residue of the said testatrix's personal estate not specifically bequeathed including all her leasehold estates after payment of all her funeral expenses and debts, and that the said personal estate is not subject to the payment of the several legacies and annuities given by the said testatrix's said will and codicils, but is exempt therefrom, and that all the said legacies and annuities ought to be paid out of the rents and profits of the said testatrix's real estates. Whereas your orator charges the contrary of such pretences to be true, and that the said personal estate is applicable to the payment of all the said testatrix's legacies and annuities, after satisfying all her funeral expenses and debts; And

[ \*232 ]

And also of  
leaseholds  
held on lives.

Plaintiff desirous of applying the personal estate, and the rents of the real estate according to the directions of the will.

## IV.

Defendants object thereto, and allege that the will and codicils were not duly executed.

Charge the contrary.

Defendants J. G. and E. his wife claim the residuary personal estate not specifically bequeathed exempt from the payment of the legacies and annuities.

Charge the contrary.

The above-named two defendants desirous that

[ \*233 ]  
 plaintiff should carry on the testatrix's trade for the benefit of her estate. Defendant J. G. alleges that he is unable to maintain his infant son, and claims an allowance for his maintenance. Defendants desirous of having a receiver appointed.

the said J. G. and E. his wife are desirous that your orator as the personal representative of the said testatrix should by means of the said testatrix's share of the capital employed in the said \*trade or business, carry on the said trade or business for the benefit of them and of the said testatrix's estate, but which your orator cannot safely do without the direction and indemnity of this court; And the said J. G. alleges that he is not of ability to maintain and educate his said son J. S. G. who is tenant in tail of the said devised estates, subject to the said term of 100 years, and is an infant of the age of ten years or thereabouts, and he therefore claims to have some part of the rents and profits of the said premises paid to him for the maintenance and education of the said J. S. G.; And your orator under the circumstances aforesaid is unable to administer the said personal estate and to execute the trusts of the said real estates without the directions of this honorable court, and the defendants are desirous of having a person appointed by this court to receive the rents and profits of the said real estates devised as aforesaid by the said fifth codicil, to which your orator has no objection. In consideration whereof and forasmuch as your orator can only have adequate relief in the premises in a court of equity where matters of this nature are properly cognizable and relievable. To THE END therefore that, &c. [see form VI. p. 5, and interrogate to the stating and charging parts.]

Prayer.

And that the said will and codicils may be established, and that the trusts thereof may be performed and carried into execution by and under the direction of this court; And that an account may be taken of the said testatrix's personal estate and effects not specifically bequeathed, and of her funeral expenses and debts, and of the legacies and annuities bequeathed by the said will and codicils, your orator being ready and hereby offering to account for all such parts of the said personal estate as have been possessed by him, and that the said personal estate may be applied in payment of the said funeral expenses debts legacies and annuities in a due course of administration and that the clear residue (if any) of the said personal estate may be ascertained and paid to the said defendants J. G. and E. his wife in her right; And in case it shall appear that the said personal estate not specifically bequeathed is not sufficient for payment of all the said funeral expenses debts legacies and annuities, or that any parts thereof are not payable out of such personal estate, then that proper directions may be given for payment of such deficiency or of such parts thereof as are not payable out of the said personal estate according to the trusts of the said term of 100 years vested in your orator as aforesaid, and that an account may be taken of the rents and profits of the said real estates comprised in the said term received by or come to the hands of your orator, and that the same may be applied according to the trusts of the said term; And that proper directions may be given touching the effects specifically bequeathed by the said will and codicils as heir-looms, and that proper inventories may be made thereof; and that all necessary directions may be given touching the application of a sufficient part of the rents and profits of the said real estates to the maintenance and education of

the said J. S. G. in case this court shall be of opinion that any allowance ought to be made for that purpose; and that a proper person may be appointed by this honorable court to receive the rents and profits of the said \*real estates devised as aforesaid by the said fifth codicil. [And for further relief, &c. see form VIII. p. 5.] May it please, &c. [See form No. 1, p. 6.]

[ \*234 ]

R. S.

*Pray subpoena against I. G. and E.  
his wife, B. S. and J. S. G.*

LXXVI. *Bill on behalf of infants to carry the trusts of a will into execution and to have the rights of parties declared;—The widow having elected to take under the will.—Prayer for an account of the personal estate, and rents of the real estate received by the executors, and that they may be charged with interest for balances in their hands—also for an account of debts, &c.—for an injunction to restrain the executors from receiving any further personal estate or rents—for a receiver—and for the appointment of a guardian for the plaintiffs.*

Humbly complaining show unto your lordship your orators and oratrixes R. M. W. M. H. M. I. M., &c. &c. infants, by A. B. of, &c. their next friend, That P. M. late of, &c. was at the time of making his will hereinafter mentioned and at his death seised in fee-simple of or otherwise well entitled to divers freehold messuages lands tenements hereditaments and premises situate, &c. and was also possessed of interested in or well entitled to a considerable personal estate, and that the said P. M. duly made and published his last will and testament in writing, bearing date on or about, &c. which was executed and attested as by law is required to pass real estates, and was amongst other things in the words and figures or to the purport and effect following [*stating the will.*] And your orators and oratrixes further show that the said testator departed this life on or about, &c. without altering or revoking his said will, leaving R. D. M. now of, &c. and one of the defendants hereto, who was then an infant, but hath since attained his age of twenty-one years, his eldest son and heir at law. And your orators and oratrixes further show that P. M. of, &c. W. M. of, &c. and I. D. of, &c. who were the executors and trustees in the said will named, and are three other defendants hereto, upon or soon after the death of the said testator duly proved the said will in the proper Ecclesiastical Court and took upon themselves the execution thereof and possessed the personal estate and effects of the said testator to a great amount, and the said defendants also entered into the possession of the real estates of the said testator, or into the receipt of the rents and profits thereof, and have ever since continued and now are in such possession or receipt. And your orators and oratrixes further show that M. M. of, &c. another defendant hereto, the widow of the said testator, hath elected to take the provisions intended for her by the

The will.

Death of testator leaving an infant son heir at law, who has since attained twenty-one.

Probate of the will.

That the executors have possessed the personal estate and rents of the real estate.

That widow has elected to

take under the will.

That the executors have received large

[ \*235 ]  
sums of money from the real and personal estate.

That one of the executors has a balance in his hands.

That two of the executors sold testator's shares in certain ships, and took a bond for the amount, and, one intends to receive the money.

That the trusts of the will ought to be performed and a receiver appointed.  
Prayer.

said will in lieu and bar of dower. And your orators and oratrixes further show that very large sums of money have been received by the defendants the executors and trustees of the said testator from his real and personal estate which have not been laid out and invested \*upon the trusts of the said will, and in particular your orators and oratrixes show that the said I. D. hath now in his hands a balance due to the said testator's estate of the sum of £—— and upwards. And your orators and oratrixes also show that the said P. M. and I. D. in or about the year —— sold the shares and interest of the said testator in two ships called, &c. to H. C. and W. I. of, &c. for the sum of £—— for which they took the bond of the said H. C. and W. I. bearing interest at £5 per cent. And your orators and oratrixes further show that the said I. D. who is in possession of the said bond hath give notice to the said H. C. and W. I. to pay to him the principal and interest due on the said bond on the —— day of ——, which principal and interest will amount to the sum of £——; and the said I. D. intends to receive the said sum of £——, and to retain and apply the same to his own use. And your orators and oratrixes charge that the said will of the said testator ought to be established and the trusts thereof performed and carried into execution by and under the decree of this honorable court, and that some proper person ought to be appointed by this honorable court to collect the outstanding personal estate of the said testator, and to receive the rents and profits of his real estate. TO THE END, &c. [*see form VI. p. 5, interrogating to the stating part.*]

And that the said defendants may answer the premises; and that the said will of the said testator may be established and the trusts thereof performed and carried into execution by and under the decree of this honorable court, and the rights and interests of your orators and oratrixes under the same may be declared and secured: And that an account may be taken of the personal estate of the said testator, and of the rents profits and produce of the real estate which have been possessed or received by the said defendants P. M. W. M. and I. D. or either of them or by any other person or persons by their or either of their order, or for their or either of their use, and that in the taking of such account the said defendants may respectively be charged with interest for such balances as shall appear to have been in their hands from time to time, and that what shall be found due from the said defendants may be secured in this honorable court for the benefit of all parties interested therein; And that an account may be taken of the funeral expenses debts and legacies of the said testator, and that the same may be paid in a due course of administration; And that in the meantime the said defendants the executors and trustees of the said testator may be restrained by the injunction of this honorable court from receiving any further part of said testator's personal estate, or of the rents profits or produce of his real estate; And that some proper person may be appointed by this honorable court to receive and collect the outstanding personal estate of the said testator, and to receive the rents and profits and produce of his real estate. And that some proper person or persons may also be appointed the guardian or guardians of your orators and oratrixes with suitable allowances for their

maintenance and education. [And for further relief see form VIII. p. 5.] May it please, &c. [see forms No. 1, and 4, p. 6.]

J. L.

\*LXXVII. *Bill by residuary legatees (some of them infants) to have the residuary estate ascertained and secured for their benefit;—testator's widow being entitled to certain articles for her life, the bill prays that an inventory may be signed by her and deposited with a master.* [ \*236 ]

Humbly complaining show unto your lordship your orators and oratrixes P. J. of, &c. and A. his wife, and E. J. W. H. J. P. K. J. M. S. and S. J. infants under the age of twenty-one years, by the said P. J. their father and next friend, That W. H. late of, &c. duly made and published his last will and testament in writing bearing date on or about —, and thereby amongst other things gave and bequeathed in the words and figures or to the purport and effect following (that is to say): *bequeathing all his personal estate to his wife for life and afterwards to the plaintiffs.*] And your orators and oratrixes further show that the said W. H. afterwards made a codicil to his said will in his own hand-writing and bearing date on or about — and in the words and figures or the purport and effect following (that is to say: ) [*bequeathing to his son R. K. H. —l. after the death of his wife.*] As in and by the said will and codicil or the probate thereof reference, &c. And your orators and oratrixes further show that the said testator departed this life on or about — without having altered or revoked his said will except so far as the same is altered by the said codicil and without having altered or revoked his said codicil. And your orators and oratrixes further show that S. H. the widow of the said testator and the said W. B. and T. O. the executors in his said will named and all defendants hereto, have duly proved the said will and codicil in the proper Ecclesiastical Court and taken upon themselves the executorship thereof, and by virtue thereof have possessed themselves of the personal estate and effects of the said testator to a large amount and value and greatly more than sufficient to pay and satisfy his just debts funeral expenses and legacies. And your orators and oratrixes further show that your oratrix A. J. is the daughter of the said testator in his said will mentioned, and that your orator and oratrixes (*the names*) are the only children of the said A. J. and your orator P. J. And your orators and oratrixes further show unto your lordship that they have by themselves and their agents repeatedly applied to the said S. H. W. B. and T. O. and have requested them to come to a full and true account with your orators and oratrixes for the personal estate and effects of the said testator and to secure and invest the residue and clear surplus of the said testator's personal estate for the benefit of your orators and oratrixes according to their respective rights and interests therein. And your orators and oratrixes well hoped that the said defendants would have complied with such your orators' and oratrixes' reason-

The will.

Codicil.

Testator's death.

That the executors proved the will and possessed the personal estate.

Applications.

able requests as in justice and equity they ought to have done. BUT NOW SO IT IS, &c. [*see form IV. p. 5.*] And the said defendants pretend that the personal estate and effects of the said W. H. were small and inconsiderable and not more than sufficient \*to pay and satisfy his funeral expenses debts and legacies, and that they have applied all such personal estate and effects in a due course of administration. Whereas your orators and oratrixes charge the contrary to be true and so it would appear if the said defendants would set forth as they ought to do, a full and true account of all and every the personal estate and effects of the said testator which have been possessed or received by them the said defendants or either of them or by their or either of their order or to their or either of their use and of their application thereof. And your orators and oratrixes further charge that the said defendants ought to make out an inventory of the said testator's household goods furniture and implements of household plate, china-ware and ware generally so called and household linen, and which inventory ought to be signed by the said S. H. and deposited with one of the masters of this honorable court for the benefit of all parties interested therein. All which actings, &c. [*see form VI. p. 5, interrogating to the stating and charging parts.*]

And that the said defendants may set forth a full true and just inventory and account of all and singular the goods chattels personal estate and effects whatsoever which the said testator W. H. was possessed of interested in or entitled to at the time of his death, and all the particulars whereof the same consisted, and the quantities qualities full real and true values of all and every such particulars; And whether all or some and which of such particulars have not and when been possessed or received by or come to the hands of the said defendants or some or one and which of them or some and what persons or person by their or either of their order or for their or either of their use, and how and in what manner and when and where and by and to whom and for how much the same and every part thereof hath been sold and disposed of, and what parts thereof and to what value and amount now remain undisposed of and what is become thereof; And also a particular account of all and every the debts whatsoever which were justly due and owing from the said testator at the time of his death, and to whom and for what and on what securities, if any, the same were respectively due; and whether any and what sums of money have been since paid in or towards the discharge of all or any and which of the said debts, and when and by whom and to whom and for what; and whether any and what sums or sum of money do or doth now remain unpaid on account thereof.

And that the said defendants may answer the premises; and that an account may be taken of the personal estate and effects of the said testator possessed by or come to the hands of the said defendants or any or either of them, or to the hands of any other person or persons by their or any or either of their order or for their or any or either of their use; and also an account of the said testator's debts funeral expenses and legacies. And that the said personal estate

Pretence that the personal estate was insufficient and that the whole has been applied. Charge the contrary.

Charge that an inventory of the effects to which the widow was entitled for life ought to be signed by her and deposited with a master.

Interrogatories for the account of the personal estate, and defendant's application thereof;

Also for the account of testator's debts, and what remain unpaid.

Prayer.

may be applied in payment of the said testator's debts funeral expenses and legacies in a due course of administration. And that the residue and clear surplus may be ascertained and secured by and under the direction of this honorable court for the benefit of your orators and oratrixes according to their respective rights and interests \*therein. And that the said defendants may make out an inventory of the said household goods and other effects specifically given to the said defendant S. H. for her life, and that such inventory may be signed by the said S. H. and deposited with one of the masters of this honorable court. [And for general relief, see form VIII. p. 5.] May it please, &c. [see form No. 1, p. 6.] [ \*238 ]

J. L.

*Pray subpoena against S. H.  
W. B. and T. O.*

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\*LXXVIII. *Bill by certain parties, entitled to two-thirds of testator's residuary estate against the other residuary legatee (the residuary legatees being also executrixes;)—praying to have certain sums of stock transferred into the accountant-general's name, and one-third thereof carried over to the separate account of each of the residuary legatees; (the object being to obviate the inconvenience of the different legatees joining with each other in receiving the dividends, the parties being remote from each other.)*

To, &c.

Humbly complaining show unto your lordship your orator and oratrixes T. W. of, &c. and L. S. his wife, late L. S. W. spinster, and H. W. of, &c. widow, and C. W. and E. W. infants under the age of twenty-one years, by the said H. W. their mother and next friend, That J. T. late of, &c. gent. duly made and published his last will and testament in writing bearing date on or about the — day of —, and thereby amongst other bequests to your oratrixes H. W. and L. S. W. then L. S. W. he gave and bequeathed in the words and figures following (that is to say;) “Also I give and bequeath unto the said H. W. S. A. and L. S. W. all my stock standing in my name in the 3 per cent. reduced and 3 per cent. consolidated bank annuities, Upon trust for them to receive the interest and dividends thereof to and for their separate and respective use and uses during their several and respective lives, without being subject to the debts control or engagements of their or any or either of their present or future husbands with whom they may happen to be married but for their own sole and respective use and uses. And it is my will and intention that my said two daughters and granddaughter shall have the disposal of their respective shares of the said stock, notwithstanding their coverture, by will, between the respective children of my said two daughters in such proportions and manner as they shall respectively think fit, and in case of failure

[ \*239 ]

His death.

The executrixes proved the will, possessed themselves of the personal estate, paid all the debts, &c. and divided the residuary estate.

Marriage of the plaintiff L. S. W.

Marriage of the defendants.

Plaintiffs desirous of having their shares secured in court, but the defendants object thereto.

Prayer.

of such disposal in their respective life-times then the third part or share of the said stock so bequeathed to my said daughters as aforesaid shall go and be held upon trust for their respective children share and share alike. And as to the other third share of the said stock so bequeathed to my said grand-daughter in case she shall not \*dispose of the same by will, then the same shall be upon trust for her children, if any, or otherwise to go to her administrator." And after divers other bequests in his said will mentioned he appointed your oratrixes and S. A. executrixes of his said will. As by the probate copy of the said will when produced to this honorable court will appear. And your orator and oratrixes further show unto your lordship that the said testator departed this life on or about the — day of — without having in any manner revoked or altered his said will leaving the sum of 3300*l.* 3 per cent. reduced annuities and the sum of 3100*l.* 3 per cent. consolidated annuities standing in his name at the time of his death. And your oratrixes and the said S. A. on or about the — day of — duly proved the said will in the Pre-rogative Court of the Archbishop of Canterbury, and possessed themselves of his personal estate and effects, and paid all his debts funeral and testamentary expenses and legacies, and paid and divided his residuary estate according to the directions contained in his said will. And your orator and oratrixes further show that since the date of the said will your oratrix L. S. W. hath intermarried with your orator T. W. but hath not any children, and that the said S. A. is the wife of A. H. A. but hath not any children, and your oratrix H. W. hath issue your oratrixes hereinbefore in that behalf named but no other children. And your orators and oratrixes further show unto your lordship that your oratrixes L. S. W. and H. W. being entitled by the will of the said testator as hereinbefore mentioned to the dividends of two-third parts of the said sums of 3300*l.* and 3100*l.* stock to their separate use, your orator and oratrixes are desirous of having their shares of the said stock secured in this honorable court, but the said A. H. A. and S. his wife object thereto. To THE END therefore that the said A. H. A. and S. his wife may, &c. [see form VI. p. 5, *interrogating to the stating part.*]

And that the said defendant S. A. may be decreed to join your oratrixes H. W. and L. S. W. in transferring into the name of the accountant-general the said sums of 3300*l.* and 3100*l.* now standing in the name of the said testator in the 3 per cent. consolidated and 3. per cent. reduced annuities, and that one third part of each of such sum may be carried to the account of your oratrix H. W., one other third part thereof to the account of your oratrix L. S. W., and the remaining third part thereof to the account of the said S. A., and that the dividends to accrue due upon the said several sums of stock to be carried to the several accounts aforesaid may be paid to your oratrixes H. W. and L. S. W. and the said S. A. respectively for their separate use during their lives. [And for further relief, see form VIII. p. 5.] May it please, &c. [see form No. 1, p. 6.]

*Pray subpoena against A. H. A.  
and S. his wife.*



**\*\*LXXIX.** *Bill by legatees (some of them infants) entitled to one moiety of the residuary estate, and desirous of having the fund secured in court on account of the situation in life of the executors;—praying to have the trusts of the will carried into execution; (5) Also for an account of testator's real and personal estate, and to have the clear residue ascertained and one moiety secured for the benefit of the plaintiffs;—Praying also for an account of what is due from one of the executors in respect of moneys of the testatrix received by him in her life-time;—Also for payment of a weekly annuity given by the will, and that the surplus income may be laid out to accumulate; and for a receiver(6) as to the rents of the freehold and leasehold estates.*

To, &c.

Humbly complaining show unto your lordship your orators and oratrixes William J. of, &c. and Jane his wife, William C. of, &c. and Mary his wife, Matilda C. and William C. two of the children of the said William C. and Mary C., and also Samuel C., Mary C. the younger, Elizabeth C. and Charles C. infants under the age of twenty-one years by the said William C. their father and next friend, James J. of, &c., Isaac B. of, &c. and Elizabeth his wife late Elizabeth J. and James J. the younger, your oratrix Elizabeth B. and your orator James J. the younger, being two of the children of your orator James J., and also William S. J., Joseph J., Henry J. Charles J., Ann J., Jane J. and Mary Ann J. infants under the age of twenty-one years, by the said James J. their father and next friend, George B. of, &c. and Jane his wife, George B. the younger, Ann B. and Eliza J. B. infants under the age of twenty-one years, by the said George B. their father and next friend, Aaron J. of, &c. and Elizabeth his wife, and Alfred J. and John J. infants under the age of twenty-one years, by the said Aaron J. their father and next friend, That Mary C. late of, &c. spinster, being at the respective times of making her will and of her death seised of certain freehold estates and possessed of leasehold and other personal property, and being of sound mind memory and understanding, duly made and published her last will and testament in writing executed and attested so as to pass freehold estates by devise bearing date the — day of —, and thereby after certain specific bequests, she gave and devised unto Edmund J. the elder, in, &c. wheelwright, and Francis J. his son, all her freehold and leasehold messuages farms lands tenements

Testatrix  
seised of free-  
hold estates,  
and entitled  
to leasehold  
and other per-  
sonal proper-  
ty.  
Her will.

(5) In *Sherritt v. Birch*, 3 Bro. Ch. Ca. 228, where a bill was brought for a moiety of a testator's residuary estate, the other moiety of which was given to A. (one of the defendants) for her life, and upon her decease to such persons as she should appoint, and in default of appointment to certain other persons who are not made defendants, yet although their interest was upon such a remote contingency they were held necessary parties; and see *Parsons v. Neville*, 3 Bro. 365.

(6) The court will not appoint a receiver merely because an executor is poor or in mean circumstances; *secus*, upon his misconduct; *Anon.* 12 Ves. 4; *Howard v. Papera*, 1 Madd. Rep. 142.

[ \*241 ]

and hereditaments lying and being in, &c. aforesaid respectively or elsewhere, and also all her moneys securities for money stock in the \*public funds goods chattels and effects, and all other her real and personal estate whatsoever not thereinbefore given or disposed of, To hold the same unto the said Edmund J. the elder and Francis J. their heirs executors administrators and assigns, subject as to her personal estate to the payment of her just debts and funeral and testamentary expenses thereout, Upon trust that they the said Edmund J. the elder and Francis J. and the survivor of them, their heirs executors and administrators should from time to time let and set her freehold and leasehold messuages farms lands tenements and hereditaments with the appurtenances, to any person or persons for any term or terms of years not exceeding the term of seven years, at such rent or rents as they or he could reasonably procure for the same, and receive the rents issues and profits thereof, and also should either continue her said moneys which might be on security, or her stock in the public funds on the security wherein they might be vested at the time of her decease, or call in and receive the same and again lay out and invest the same, and also lay out and invest all other her moneys in or upon some or one of the public stocks or government funds of Great Britain, or upon some good and sufficient security or securities of real estate or estates, with full power to vary the securities in manner therein mentioned; And as to one moiety of her said trust estate and premises, Upon trust for the said Edmund J. the elder and Sarah Jones and Martha J. his sister, and also for the testatrix's cousins James Q. Joseph Q. and Sarah Q. to be divided equally amongst them, with benefit of survivorship amongst them in the event of the death of any of them in the life-time of the testatrix without issue; and as to the other moiety of her said trust estate and premises, Upon trust that the said Edmund J. the elder and Francis J. should receive the rents issues and profits interest dividends and annual produce thereof, and out of the same should pay unto your orator and oratrix William J. and Jane his wife weekly during their joint lives the sum of 16s., and in case your oratrix Jane J. should survive her said husband William J. then to pay unto your oratrix Jane J. weekly during her life the sum of 12s., and as to the residue of the said rents issues and profits interest dividends and annual produce of the same moiety which should from time to time remain after payment of the weekly sums aforesaid, Upon trust to lay out and invest the same in or upon some or one of the stocks funds or other securities hereinbefore mentioned, and to receive the interest dividends and annual produce thereof, and again to lay out and invest the same in like manner so as to form an accumulating fund in the nature of compound interest, during the natural life of your oratrix Jane J. and to stand possessed of the same stock funds or other securities, Upon trust after the decease of your oratrix Jane J. to pay and apply the rents issues and profits interest dividends and annual produce of the same moiety of her said trust estates and premises, and of such stocks funds and other securities and accumulations as last aforesaid, unto and amongst the six children then living of your orator and oratrix William J. and Jane his wife, to be divided

equally amongst the same children for and during their natural lives respectively, share and share alike as tenants in common and not as joint-tenants, and as for \*the share of William J. the younger, plumber (one of the six children of your orator and oratrix William J. and Jane his wife) from and after the decease of the said William J. the younger, Upon the same trusts as are thereinbefore expressed concerning the other shares of the same moiety, or as near thereto as might be, and the deaths of parties change of interests and other intervening circumstances would admit; Provided always and the said testatrix further willed and directed that the rents issues and profits dividends and annual produce of the respective original parts or shares of the four daughters, being four of the six children of your orator and oratrix William J. and Jane his wife, and also of the part or share of the said William J. the younger from and after his decease, of and in the same moiety of her said trust estate and premises and all accumulations thereof, should notwithstanding the trust thereof thereinbefore limited and declared for the benefit of the said four daughters, be held by her said trustees or trustee, Upon trust that the said trustees should from time to time during the respective lives of the four daughters of your orator and oratrix William J. and Jane his wife, receive the rents issues and profits interest dividends and annual produce arising from the said respective parts or shares of and in the same moiety of her said trust estate and premises, and stand possessed thereof respectively for the sole respective uses of the said four daughters of your orator and oratrix William J. and Jane his wife, separate and apart from their husbands, so as that the daughters should not charge or anticipate the same. And as for and concerning the same moiety of her said trust estate and premises and the accumulations thereof as aforesaid, from and after the several and respective deceases of them the said four daughters and the respective deceases of William J. the younger and of James J. the two sons of your orator and oratrix William J. and Jane his wife, then in trust for the child if only one, and if more than one then all the children lawfully begotten and to be begotten of the said four daughters of the said William J. respectively, the child or children of each of the said four daughters to stand and be *in loco parentis* and to take *per stirpes* and not *per capita*, to be equally divided between or amongst the same respective children if more than one, share and share alike as tenants in common and not as joint-tenants, and the heirs executors administrators and assigns of the same child or children respectively; and in case any one or more of such respective children should depart this life under the age of twenty-one years, without leaving any issue of his or their body or bodies lawfully begotten, living at his or their death or respective deaths, then as to for and concerning the original part or share parts or shares of and in the same moiety of her said trust estate and premises thereinbefore limited for the benefit of the said respective children, and also the part or share, parts or shares of and in the same moiety of her said trust estate and premises which should from time to time belong to or vest in or be taken by the same children respectively by virtue of this present provision in the nature of

[ \*242 ]

Proviso that the shares of the daughters should be in trust for their separate use.

[ \*243 ]

Appointment  
of executors.

Death of testa-  
trix, leaving  
H. J. her heir  
at law.

Probate by the  
executors who  
entered into  
possession of  
the real es-  
tates, and pos-  
sessed all the  
personal es-  
tate.

Names of the  
children inter-  
ested.

cross-remainders, Upon trust for the other or others of the same respective children to be equally divided between or amongst them, if more than one, share and share alike, as tenants in com-  
\*mon and not as joint tenants, and his or their respective heirs exe-  
cutors administrators and assigns; and the said testatrix directed that the said trustees or trustee for the time being of her said trust estate and premises should in the mean time from and after the several deceases of the several and respective tenants for life of her said trust estate and premises, until the part share or proportion thereby provided for any child of any one or more of such tenants for life should become payable or transmissible to him her or them respectively under or by virtue of the trusts aforesaid, receive the rents issues and profits interest dividends and annual produce of such part share or portion, and pay the whole of such rents issues and profits interest dividends and annual produce, or so much as he or they respectively should think fit, to the guardian or guardians or person or persons who for the time being should be acting as the guardian or guardians of such child or children respectively, to the intent that he she or they respectively might pay and apply the same to and for the maintenance and education of such child or children respectively, according to his her or their presumptive part shares or proportions of and in her said trust estate and premises; and in case such rents issues and profits interest dividends and annual produce should not be wholly paid and applied to and for the purpose hereinbefore-mentioned, then that the trustees or trustee for the time being, acting in the execution of the said trusts should lay out and invest the surplus thereof at interest so as to accumulate in increase of the original shares, and she the said testatrix thereby nominated and appointed the said Edmund J. the elder, and F. J. to be joint executors of her said last will and testament; and the said testatrix thereby revoked and declared void all other wills by her at any time theretofore made. As in and by the said will and probate copy thereof when produced will more fully appear. And your orators and oratrixes further show unto your lordship that the said testatrix died on or about —, and that she left Henry J. of, &c. her nephew and heir at law; and that upon her death the said Edmund J. the elder, and Francis J. duly proved her said will in the proper Ecclesiastical Court, and entered into possession of her real estates, and possessed themselves of her personal estate which was more than sufficient for payment of her debts funeral and testamentary expenses with a large surplus. And your orators and oratrixes further show unto your lordship that at the date of the said will your orator and oratrix W. J. and Jane his wife had six children living, viz. your oratrix Mary C. your orator James J. your oratrix Jane B. your oratrix Elizabeth J. the younger, and Annie the wife of Samuel J. the elder of, &c.; and that your orators and oratrixes Matilda C. Samuel C. Mary C. the younger, Elizabeth C. and Charles C. are the only children of your oratrix Mary C.; and that your orators and oratrixes Elizabeth B. James J. William S. J. Joseph J. Henry J. Charles J. Ann J. Jane J. and Mary Ann J. are the only children of your orator James J. and that he has had only two other children, viz. Joseph J. who died an infant of tender

years and unmarried in the lifetime of the testatrix, and Francis J. who was born after the death of the said testatrix, and is since dead; and that your oratrix Jane B. has issue your orator George B. the younger, and your oratrix Ann B. and Eliza J. B. and no other \*children; and that your oratrix Elizabeth J. has issue your orator Alfred J. and John J., and that she never had any other issue except certain children who all died under age and unmarried, and all of whom died in the life-time of the said testatrix, except one who has died since. And your orators and oratrices further show that the said Ann J. the wife of the said Samuel J. died in the life-time of the said testatrix, and that Samuel J. the younger is her only child, and is thereby become entitled as he insists to a share of the said testatrix's property to take effect immediately on the death of your oratrix Jane J. And your orators further show that the said Edmund J. the elder, Sarah J. Martha J. James Q. Joseph Q. and Sarah Q. all respectively survived the testatrix, and became entitled to one moiety of her estate. And your orator and oratrices further show that the said Edmund J. the elder at the time of her death was indebted to the said testatrix in a considerable sum of money upon a balance of account between them, the said Edmund J. the elder having received considerable sums of money on account of the said testatrix in her life-time. And your orators and oratrices further show that your orators and oratrices together with the said William J. the younger and Samuel J. the younger are entitled to or interested in one moiety of the clear residue of the said testatrix's estate, and entitled to have the same invested and secured for their benefit, and that the said Edmund J. and Francis J. have accordingly purchased and there are standing in their names on account of the share of such residue to which your orators and oratrices are entitled some considerable sums of stock. And your orator and oratrices further show that the said Edmund J. the elder and Francis J. are persons in a humble situation in life, and possessed of little or no property, the said Edmund J. being a wheelwright in a small way of business, and the said Francis J. being his journeyman, and that it will be for the benefit of your orators and oratrices that the fund to which they are entitled should be secured in this honorable court. And your orators and oratrices further show that the said Edmund J. and Francis J. have now in their hands considerable sums of money, part of the residue of the said testatrix's estate and that they are in the receipt of the rents and profits of the said testatrix's freehold and leasehold estates, and that for several years they retained in their hands and employed for their own benefit the surplus income of that moiety of the said testatrix's estate in which your orators and oratrices are interested, after paying the said allowance of 16s. a-week to your orator and oratrix William J. and Jane his wife. And your orators and oratrices further show unto your lordship that they have both by themselves and their agents applied in a friendly manner to the said Edmund J. the elder, and Francis J. to render unto them an account of what is due to them in respect of the moiety of the property of the said Mary C. deceased, and to carry into execution the trusts of the said will.

[ \*244 ]

That six of the defendants are entitled to one moiety.

That one of the executors was indebted to the testatrix for moneys received by him on her account.

That plaintiffs, together with two of the defendants are entitled to one moiety of the residuary estate.

That the executors have purchased certain sums of stock.

That the executors being in a humble situation in life, the fund ought to be secured in court.

That the executors have trust moneys in their hands, and are in receipt of the rents of the real and leasehold estates, and have for several years retained and employed for their own benefit the

surplus income, of the plaintiffs' moiety directed to be invested.

[ \*245 ]

Applications to the defendants the executors.

#### IV.

Pretence that there is no surplus after payment of debts, &c.

Charge the contrary.

Charge that the executors have certain books, accounts, &c., and that they ought to deliver up the same.

That a receiver ought to be appointed.

That the heir at law disputes the will, and that two defendants refuse to join in the suit.

Interrogatories for the account of the executors' receipts and payments, and of the property subsisting in specie;

Also as to books, accounts, &c.

BUT NOW SO IT IS may it please your lordship that the said Edmund J. the elder, and Francis J. combining and confederating with the said Henry J. William J. the younger, Samuel J. the younger, Sarah J. Martha J. James Q. Joseph Q. and Sarah Q. and divers \*other persons, &c. [see form VI. p. 5,] absolutely refuse to comply with your orators' and oratrixes' said request; and to countenance such refusals they pretend that there is little or no surplus of the said testatrix's estate after payment of her debts funeral and testamentary expenses. Whereas your orators and oratrixes charge the contrary, and that so it would appear if the said Edmund J. the elder, and Francis J. would set forth a full true and particular account of their receipts and payments off account of the said testatrix's estate, and of the particulars of the property at present subsisting in specie. And your orators and oratrixes further charge that the said defendants have or lately had in their possession custody or power divers books accounts books of accounts letters copies of letters and extracts of letters memorandums and writings relating to the matters hereinbefore mentioned, and that they ought to deliver the same to your orators and oratrixes, but they refuse so to do. (7) And your orators and oratrixes charge that some proper person ought to be appointed receiver of the rents and profits of the said testatrix's freehold and leasehold estates; And that the said Henry J. as the heir at law of the said testatrix, sometimes disputes her will, and the said William J. the younger and Samuel J. the younger refuse to join in this suit, TO THE END therefore that, &c. [see form VI. p. 5, *interrogating to the stating and charging parts.*]

And that the said defendants Edmund J. and Francis J. may set forth a full true and particular account of their receipts and payments on account of the said testatrix's estate, and of the particulars of her property at present subsisting in specie, and whether the said defendants or one and which of them have not or hath not in their or his possession or power divers or some and what books accounts books of accounts letters copies of letters and extracts of letters memoranda and writings relating to the matters hereinbefore in that behalf mentioned, or some or one and which of them, and that they or he may set forth a list or schedule thereof, and may leave the same in the hands of their clerk in court for the usual purposes; And whether the said defendants or either and which of them have or hath now in their or his possession or power all such of the aforesaid particulars as at any time have or hath been in their or his possession or power, and if not, then that they or he may set forth what is become thereof, and in whose possession or power the same were when they or he last saw or heard of the same respectively; And whether some proper person ought not to be appointed receiver of the rents and profits of the said testatrix's freehold and leasehold estates, or if not, why not.

Prayer.

And that the said defendants may answer the premises; And that the will of the said testatrix may be established, and the trusts thereof

(7) It is a general rule that executors must deposit papers and writings in their hands for the benefit of the parties interested, unless there are purposes which require that they should retain them; *Freeman v. Fairlee*, 3 Mer. 30.

performed and carried into execution ; And that an account may be taken of the real and personal estate of the said testatrix possessed by the said defendants her trustees and executors, or either of them, or by their or either of their order, or for their or either of their use, and of her debts funeral and testamentary expenses; and that an account may be \*taken of what was due to the said testatrix at the time of her death from the said Edmund J. the elder ; And that the clear residue of the said testatrix's estate may be ascertained, and that one moiety thereof may be secured for the benefit of your orators and oratrixes, and of the said William J. the younger and Samuel J. the younger, according to their respective interests therein, and that the said annuity of 16s. per week may be paid thereout to your orator and oratrix William J. and Jane his wife ; and that the surplus income may be invested to accumulate, and that a receiver may be appointed by this honorable court to collect and get in the rents issues and profits of the freehold and leasehold estates of the said testatrix M. C., and that what may appear due to your orators and oratrixes in respect of their moiety thereof may be paid into this honorable court for the benefit of your orators and oratrixes. And that your orators and oratrixes may have such further and other relief in the premises as to your lordship shall seem meet. May it please, &c. [see form No. 1, p. 6.] [ \*246 ]

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\*LXXX. *Bill by legatees against the testator's widow and executrix and devisee in trust under his will, (her co-executors and trustees having renounced and disclaimed the trust;)—Praying to have the trusts of the will carried into execution, and the accounts taken of testator's personal and real estates, and of his debts, legacies, &c.—The bill charging the defendant with having misapplied the testator's property in continuing to carry on his trade and otherwise, also prays for an account of what is due from her, for a receiver to collect in the outstanding personal estate, and to have the same sold and invested on the trusts of the will; for an injunction to restrain the defendant from receiving the outstanding personal estate;—also to have her removed from acting as a trustee, and for a reference to a master to appoint new trustees.*

To, &c.

Humbly complaining show unto your lordship your oratrixes and orators M. Till otherwise Tile of, &c. spinster, F. Till otherwise Tile of, &c. W. Till otherwise Tile of, &c. gentleman, S. Till otherwise Tile the younger of, &c. spinster, and J. Till otherwise Tile, an infant under the age of twenty-one years or thereabouts, by your orator F. Till otherwise Tile his brother and next friend, That W. Till otherwise Tile, late of, &c. tea-dealer was at the respective times of making his will and of his death hereinafter mentioned, seised and entitled in fee-simple of and to divers messuages lands

[ \*247 ] tenements and hereditaments, and was at the same time possessed of and entitled to a considerable personal estate, consisting of a large and valuable stock in trade book and other debts cash in hand and other effects of large amount in the whole; and that being so seised possessed and entitled, and being of sound mind the said W. Till otherwise Tile duly made and published his last will and testament \*in writing bearing date the — day of —, and which was so executed by him and attested as by law is required for passing real estate by devise; and that thereby after bequeathing certain specific legacies as therein mentioned, he gave all his household goods plate linen china and household furniture to his wife Sarah (the defendant hereto) for her own use and benefit, and in every event during her life to be at her own disposal, either by her last will and testament in writing or any note or memorandum in writing under her hand or signed by her, whether witnessed or not; and in default of such disposal, and as to any part which should not be disposed of, it was his will that the same should fall into and be considered as part of the residue of his estate. And as for and concerning his real estate, and as for and concerning any estate and property wherein or whereto he should have any interest right or title at the time of his decease, and not thereinbefore given or disposed of, the said testator did give devise appoint and bequeath the same and every part thereof unto his executors and trustees therein and hereinafter mentioned their heirs executors administrators and assigns for ever, or for all his estate and interest therein, Upon the trusts nevertheless and to and for the several intents and purposes thereafter expressed and declared of and concerning the same (that is to say:) Upon trust at the discretion of his executors and trustees or the survivors or survivor of them or the executors or administrators of such survivor, to make sale of his real estate and other property which should be in its nature saleable, or otherwise to set let manage employ and improve the same in such manner as his said executors or administrators and trustees or the survivors or survivor of them or the executors or administrators of such survivor should in their his or her discretion think fit; And upon further trust by and out of the moneys arising from such sale, or from or for any part of his personal estate, and also by and out of his ready money and securities for money, or by all or any of those ways or means or by any other ways and means whatsoever which they or he or the survivors or survivor of them or the executors or administrators of such survivor should in their his or her discretion think fit, pay discharge and satisfy all such debts as he the said testator should justly and truly owe to any person or persons whomsoever at the time of his decease his funeral expenses and the charges of the probate of his will, and should lay out and invest the residue of the moneys in the public funds or at interest upon real or government securities, and might and should from time to time alter and transfer the said stocks and securities respectively as they should think advantageous, and might and should pay the dividends interest and yearly produce of such stock and securities, and also the rents issues and profits of his real estate or so much thereof as should be unsold, unto his said wife or



otherwise permit her to receive the same for the maintenance of herself and the maintenance education and bringing up of his child or children until his child or all his children should attain the age of twenty-one years; and when and so often as his child or all his children should attain the age of twenty-one years, he directed his executors and trustees or the survivors or survivor of them or the executors or administrators of \*such survivor to divide the whole residue of his property into two equal and distinct parts, and to appropriate such respective parts for the purposes therein and herein-after mentioned (that is to say:) As for and concerning one such part he willed and directed that the same should go and belong to and be equally divided amongst his children their respective heirs executors administrators and assigns for ever, or for all his right and interest therein; but if any of his children should be dead leaving issue he willed and directed that the share of him or her respectively so dying should go or belong to or be equally divided amongst such issue, at such time or times and in such manner as his executors and trustees or the survivors or survivor of them his or her executors or administrators should think proper, although such issue or any of them might be then under age, but in case there should be only one or the issue of only one child then living, then to such only child or to or equally amongst such only issue his her or their heirs executors administrators or assigns for ever, or for all his right and interest therein respectively; And as for and concerning the dividends interest and yearly produce of the other equal share, he willed and directed that his executors and trustees or the survivors or survivor of them or the executors or administrators of such survivor would and should pay the same to his wife for and during the residue of her life, or otherwise to permit her to receive the same, and after her decease the said testator willed and directed that such share should go and belong to his child or children or grand-child or grand-children then living or any one or more of them in such manner as his wife should direct and appoint, by any one or more deed or deeds writing or writings under her hand and seal executed by her in the presence of and attested by one or more credible witness or witnesses, or as his wife should direct or appoint by her last will and testament, or any writing in the nature of or purporting to be her last will and testament to be by her executed in the presence of three or more credible witnesses, and to be attested in her presence by such three or more credible witnesses. And for want of such appointment and as to so much thereof as should not be appointed, he willed and directed that the same should go and belong and be equally divided amongst his children their respective heirs executors administrators and assigns for ever, or for all his right and interest therein; but if any of his children should be then dead leaving issue then living, he willed and directed that the share of him her or them so dying should go and belong to and be equally divided amongst such issue at such time or times and in such manner as his executors and trustees or the survivors or survivor of them should think proper, although such issue or any of them might be then under age; But in case there should be only one child then living and no issue of any

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other, and in case there should be only the issue of one child then living, then to such only child or to or equally amongst such only issues his her or their heirs executors administrators and assigns for ever, or for all his right and interest therein respectively; But in case his wife should survive him but should die during the minority of his only child, or during the minority of all or any of his children, then from and after the decease of his wife he willed and \*directed that his said executors and trustees or the survivors or survivor of them or the executors or administrators of such survivor should stand possessed of such residue of the money which should arise from such sale or otherwise as aforesaid, and also of all his ready money securities for money and of the moneys which should arise or be made or gotten from or for any other part of his estate or effects as well real as personal, In trust for his child if only one, but if more than one, In trust for all and every his children equally to be divided between or amongst them share and share alike, the share or shares of such child or children being a son or sons, to be paid or assigned and transferred to him or them as and when he or they should respectively attain his or their age or ages of twenty-one years respectively, and the share or shares of such of them as should be a daughter or daughters to be paid or assigned and transferred to her or them as and when she or they should severally attain her or their age or respective ages of twenty-one years or be married respectively, which should first happen, yet under the restrictions therein and hereinafter mentioned as to the share or shares of daughters respectively. Provided always it was his will and mind that if any such child or children being a son or sons should die without leaving lawful issue before he or they should attain his or their age or ages of twenty-one years respectively, or being a daughter or daughters should die before she or they should attain her or their age or ages of twenty-one years respectively and without leaving issue, then the share or shares as well original as accruing by virtue of that proviso of him her or them so dying, should from time to time go accrue and belong to and vest in the survivors or survivor or others or other of such children and to be paid or assigned and transferred to him her or them if more than one share and share alike, at such times or time and in such manner as therein and hereinbefore mentioned and expressed touching his her or their original share or shares; And it was his will and mind that his said executors and trustees and the survivors and survivor of them and the executors and administrators of such survivor should in the mean time and until such share or shares of his child or children should become payable or transferable as aforesaid, by with and out of the dividends interest and rents or yearly produce of the share or shares of such child or children respectively, pay and apply such yearly and other sums of money as his executors and trustees or the survivors or survivor of them or the executors or administrators of such survivor should think proper in for or towards the maintenance and education of such child or children respectively, and should permit the surplus and residue (if any) of the dividends interest rents and yearly produce of the share or shares of such child or children respectively, to accumulate for the

benefit of such person or persons as should be entitled thereto by virtue of that his will; And it was his will and mind in case his wife should die during the minority of his only child or during the minority of all or any of his children, that it should and might be lawful to and for his executors and trustees and the survivors and survivor of them and the executors and administrators of such survivor, to pay and apply any part or parts \*of the share and respective shares of his child or children as aforesaid, for the putting of him or them to any business profession or employment or otherwise, for his or their preferment or advancement in the world, notwithstanding he or they should not have attained his or their age or respective ages of twenty-one years. Provided always and it was his will and mind that if his only daughter or any of his daughters should marry or be inclined to marry before her share should be actually paid or assigned and transferred, then and in such case his executors and trustees or the survivors or survivor of them or the executors or administrators of such survivor should and might before such payment or assignment and transfer should be made, insist upon and obtain a proper and suitable settlement to be made for such daughter or daughters respectively and the issue of such daughter or daughters respectively, in such manner and by such ways and means as his said executors and trustees or the survivors or survivor of them or the executors or administrators of such survivor should think reasonable; And it was the said testator's will and mind in case his wife should marry again in the life-time of his child or in the life-time of any of his children, then he willed and directed in lieu of the dividends interest and yearly profits thereinbefore directed to be paid to or received by his wife as aforesaid, that his executors and trustees or the survivors or survivor of them or the executors or administrators of such survivor might and should pay the dividends interest and yearly produce of one-fourth part only and no more of the before mentioned residue unto his said wife for and during the then residue of her natural life, or otherwise permit her to receive the same; but it was his will that the same dividends interest and yearly produce should be for the sole use of his said wife, and separate and apart from any husband, and so that the same might not be under his control or subject to his debts forfeitures or engagements, and so that the receipt of his wife notwithstanding her coverture, or of the person or persons to whom she should appoint the same to be paid, might be good and effectual discharges for the money which should be expressed to be received, yet nevertheless so that his wife might not anticipate charge or assign all or any part thereof; And from and after the decease of his wife he willed and directed that such last-mentioned fourth part and the dividends interest and yearly profits thereof should go and belong to or for the use of his child children and issue, in like manner as he had thereinbefore directed of and concerning the same residue and the dividends interest and yearly profits thereof, in case his wife should die during the minority of his only child, or during the minority of all or any of his children, or as near thereto as might be and the circumstances of the case would admit; and also from and after the marriage of his wife he willed and directed that the other three-fourth parts of such

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[ \*251 ]

residue and the dividends interest and yearly produce thereof should go and belong to or for the use of his child children and issue, in such manner as he had thereinbefore directed of and concerning the said residue and the dividends interest and yearly produce thereof, in case his wife should die during the minority of his only child or during the minority of all or any of his children, or as near thereto \*as might be and the circumstances of the case would admit; and he willed and declared the provision made for his wife as aforesaid was to be in full for her dower or thirds at common law of in to or out of any part of the real estate to which he would be entitled at the time of his decease, or to which he had been or should be entitled at any time during the coverture between them, and it was the said testator's will that his executors and trustees and the survivors or survivor of them and the executors or administrators of such survivor might and should at such time or times as they he or she should in their his or her discretion judge to be fit and convenient, lay out and invest all or any part of the moneys arising from any real estates or from the residue or surplus of his personal estate so bequeathed to them as aforesaid, in one or more purchase or purchases of messuages warehouses buildings land or grounds either freehold copyhold or leasehold within or near L. or elsewhere in the said county of, &c. or within the county of Y.; and upon such purchase or purchases being made he willed and directed that the purchased premises and the rents and profits thereof respectively should be upon such trusts and for such purposes and with under and subject to such powers and provisoes as declared concerning his real estate, and the moneys arising from the residue and surplus of his personal estate, and the rents dividends interest and produce thereof respectively, or so much or so many of them as should be then subsisting or capable of taking effect, his will being that his real estate from the time of his death and the real estate to be purchased as aforesaid, should from the time of the purchase be and be considered as a fund and personal property and not as real property or in the nature of real property. And the said testator did give the guardianship of the person or persons of such of his children as should be under the age of twenty-one years at the time of his decease to his wife and his brother J. Till and his brother-in-law J. Till during the respective minority of his children; and the said testator nominated and appointed his said wife and the said J. Till and his brother-in-law J. Till executors and trustees of his will. As by the said will or the probate thereof reference being thereto had when produced will appear. And your oratrixes and orators further show unto your lordship that the said testator departed this life on or about — without having revoked or altered his said will leaving S. Till otherwise Tile, his widow in his said will named, your orator F. Till otherwise Tile, his eldest son and heir-at-law, and your oratrixes and orators M. Till otherwise Tile, W. Till otherwise Tile, S. Till otherwise Tile, the younger, and J. Till otherwise Tile, his only other children, all of them infants him surviving. And that on or about — the said S. Till otherwise Tile his widow, alone duly proved the said will in the Consistorial Court of the

Appointment  
of executors.

Death of tes-  
tator leaving  
a widow and  
five children.

Probate by his  
widow.

Bishop of C. and thereby became and she now is his legal personal representative. And that some time after the death of the said testator his brother J. Till and his brother-in-law J. Till two of the executors and trustees in the said will named, duly renounced probate of the said will and they also renounced and disclaimed the estate by the said will devised in trust as aforesaid, and they never \*in any manner acted in the trusts of the said will or possessed themselves of any part of the estate and effects of the said testator. And that the said S. Till otherwise Tile, as such personal representative as aforesaid, possessed, got in and received the personal estate and effects of the said testator. And she also entered into the possession and receipt of the rents and profits of the real estates of the said testator, and she hath ever since been and now is in such possession and receipt except as to such part of the said real estate as hath been disposed of as hereinafter mentioned. And that such personal estate and effects and rents and profits so possessed and received by the said S. Till otherwise Tile the elder as aforesaid were to a large amount in the whole and very considerably more than sufficient to pay and satisfy the funeral and testamentary expenses and debts of the said testator and the several pecuniary legacies given by his said will. And that by and out of the said personal estate and effects and rents and profits so possessed by her as aforesaid, the said S. Till otherwise Tile the elder duly paid and satisfied all the said testator's funeral and testamentary expenses and the pecuniary legacies given by his said will and some of the debts of the said testator, but that the said S. Till otherwise Tile the elder permitted others of the debts of the said testator and particularly the sum of 1040*l.* which was due and owing by the said testator to one A. B. upon the note of hand of the said testator, and the sum of 2000*l.* which was due and owing to one C. D. on the security of a mortgage of a certain freehold house and premises belonging to the said testator situate in — to remain unpaid, and she retained in her own hands the remainder of such personal estate and effects after making the several payments hereinbefore mentioned, and which personal estate consisted amongst other particulars of the stock in trade of the said testator. And your oratrixes and orators further show unto your lordship that the said testator in his life-time and up to the time of his death carried on the trade or business of a tea-dealer in L.; and that upon the death of the said testator the said S. Till otherwise Tile took upon herself to carry on and she hath ever since continued to carry on the said testator's said trade or business on her own account and for her own benefit; and that she used and applied the personal estate and effects remaining in her hands as aforesaid in carrying on the said business in such manner as she thought proper and never invested any part thereof upon the trusts of the said will; and that in the course of carrying on such business as aforesaid the said S. Till otherwise Tile became indebted to various persons in very considerable sums of money; and she from time to time paid such debts out of the said testator's personal estate remaining in her hands and hath thereby and otherwise wasted and misapplied

Two of the executors renounced and disclaimed the estate devised to them in trust.

[ \*252 ]

That the widow possessed herself of the personal estate and received the rents of the real estates.

That the same were more than sufficient to pay debts, &c.

That widow has paid the funeral and testamentary expenses and legacies and some debts, but permitted others to remain unpaid.

Statement of such as remain unpaid.

That she has retained the remainder of the personal estate.

That testator carried on the trade of a tea-dealer, and his widow has continued the same on her own account and applied the personal estate in carrying on the same and in payment of debts contracted by her.

That she has conveyed a freehold estate in satisfaction of a simple contract debt.

[ \*253 ]

That a mortgage debt still remains unpaid.

That parts of the personal estate still remain in defendant's hands in specie.

That she is greatly in debt and embarrassed and has applied the personal estate in payment of her own separate debts.

That several of the plaintiffs have attained twenty-one.

Applications to the defendant.

the same. And your oratrixes and orators further show that some time since the said A. B. required payment of the said debt or sum of £1040 so due as aforesaid from the estate of the said testator, and that instead of satisfying such debt out of the personal estate of the said testator then in her hands or due from her, the said S. Till otherwise Tile the elder conveyed and assured a certain freehold house and premises situate in — being part of the estate of the said testator in satisfaction of such debt; and that the whole of the said mortgage debt or sum of 2000*l.* is still unpaid and due and owing on the security of the said house and premises in — aforesaid. And your oratrixes and orators further show that divers considerable parts of the personal estate and effects of the said testator are still remaining in the hands of the said S. Till otherwise Tile the elder in specie; and she is very considerably indebted to the said testator's estate in respect of such parts thereof as have been applied by her in carrying on the said trade; and that divers debts or sums of money to a large amount in the whole are now due and owing from her to various persons which have been incurred by her in carrying on the said trade or business; and that the said S. Till otherwise Tile is in embarrassed and insolvent circumstances and totally unable to pay such debts any otherwise than out of the personal estate and effects of the said testator now remaining in her hands; and she hath been applying and intends to continue to apply such personal estate and effects in payment of her own separate debts. And your oratrixes and orators further show unto your lordship that your oratrixes and orators M. Till otherwise Tile, F. Till otherwise Tile, W. Till otherwise Tile, and S. Till otherwise Tile, the younger, some time since attained their respective ages of twenty-one years; and that your orator J. Till otherwise Tile is still an infant under the age of twenty one-years and that your oratrixes and orators are desirous that the personal estate and effects of the said testator or the produce thereof now remaining in the hands of the said S. Till otherwise Tile should be invested and secured; and that the same together with the rents of said testator's said real estate now remaining unsold should be applied according to the trusts of the said testator's will. And your oratrixes and orators have frequently and in a friendly manner by themselves and their agents applied to the said S. Till otherwise Tile, and requested her to come to an account with your oratrixes and orators for the personal estate and effects of the said testator and the rents and profits of his real estate possessed got in and received by her and of her application thereof; and to invest and secure the residue of such personal estate and effects now in her hands, and to apply the income thereof together with the rents and profits of the said real estate now remaining unsold for the maintenance and support of herself and your oratrixes and orators pursuant to the trusts of the said will. And your oratrixes and orators well hoped that such requests would have been complied with as in justice and equity they ought to have been. BUT NOW SO IT IS may it please your lordship that the said S. Till otherwise Tile the elder combining and confederating with divers persons, &c. [*see form IV. p. 5,*] hath refused to comply with the said requests, some-

times pretending that the personal estate and effects of the said testator and the rents and profits of his real estates have been small and inconsiderable, and that the whole thereof hath been applied in payment of the funeral and testamentary expenses and the pecuniary legacies given by his said will, and such of his debts as have been paid thereout, and that no part of the personal estate \*and effects of the said testator is now in the hands of or due from the said defendant. Whereas your oratrixes and orators expressly charge the contrary of all such pretences to be true, and that the said personal estate and effects and rents and profits so possessed by the said defendant were of very large amount in the whole and considerably more than was required for payment of all the funeral and testamentary expenses and debts of the said testator (including the said two several debts of £1040 and £2000 respectively) and the pecuniary legacies given by his said will; and that after making the several payments aforesaid, a very considerable part of the personal estate and effects and rents and profits remained in the hands of the said defendant; and that so the truth would appear to be if the said defendant would set forth such accounts as are hereinafter prayed for but which she refuses to do. And your oratrixes and orators charge that the said defendant was not possessed of any property except what she was entitled to under the said testator's will; and that the said trade or business of a tea-dealer was carried on by her solely with the property and effects of the said testator; and that the whole of the property and effects which is now in the hands of the said defendant belongs to or hath been produced by the personal estate and effects of the said testator and the rents and profits of his real estate; and that the same ought to be sold and converted into money and invested and applied according to the trusts of the said will. But the said defendant being insolvent threatens and intends to apply such personal estate and effects now in her hands in payment of the debts which have been incurred by her on her own account in carrying on the said trade, unless she shall be restrained from so doing by the injunction of this honorable court. And under the circumstances aforesaid your oratrixes and orators charge that a proper person ought to be appointed to collect and receive the said testator's personal estate; and that the said defendant ought to deliver over the said personal estate now in her hands to such receiver, and ought to be restrained by the order or injunction of this honorable court from collecting or receiving the outstanding personal estate, and from paying away or parting with any part of the property and effects of the said testator now remaining in her hands to any person other than such receiver; and that the whole of the personal estate of the said testator now remaining undisposed of, and also his real estate remaining unsold, ought to be invested and secured upon the trusts of the said will for the benefit of the persons entitled thereto under the said will. And your orators and oratrixes charge that the said defendant is a trader subject to the bankrupt laws and is now in danger of becoming bankrupt; and that if she should become bankrupt the amount of what has become due from her to the said testator's estate ought to be proved as a

Pretence that the personal estate was small and that the whole has been applied.

[ \*254 ]

Charge the contrary to be true.

That defendant has carried on trade with the testator's property.

That the remaining property ought to be sold and the money invested.

That a receiver ought to be appointed to get in the outstanding personal estate, and the defendant restrained therefrom.

That the remaining personal and real estate ought to be invested and secured.

Charge that defendant is a trader and in danger of becoming bankrupt.

That she ought to be removed from being a trustee.

[ \*255 ]

That she has in her possession divers books, &c. and ought to produce the same.

Interrogatories as to books, &c.

Prayer.

debt against her estate, and some proper person ought to be appointed to make such proof. And your orators and oratrixes charge that under the circumstances aforesaid, the said defendant ought to be removed from being a trustee under the said will, and that some proper person or persons ought to be appointed to act in her place. And your orators and oratrixes charge that the said defendant \*hath now or lately had in her possession custody or power divers books books of account accounts memoranda papers and writings relating to the real and personal estates of the said testator and to the matters aforesaid, and whereby if the same were produced the truth of the matters aforesaid or some of them would appear; and that she ought to produce the same, but she refuses so to do. All which actings doing pretences and refusals, &c. [see form VI. p. 5, *interrogating to the stating and charging parts.*]

And whether the said defendant hath not now or lately had not in her possession custody or power divers or some and what books books of account accounts memoranda papers and writings, or some and what book book of account account memorandum paper or writing relating to the real and personal estate of the said testator or to some and what parts or part thereof, and to the matters aforesaid or some or one and which of them; And whether thereby or by some or one and which of them if the same were produced or otherwise and how the truth of the several matters aforesaid or some or one and which of them would not appear or how otherwise; And that the said defendant may set forth a full true and perfect list or schedule of all and every the said books books of account accounts memoranda papers and writings; and may produce and leave such of them as now are or is in her possession custody or power in the hands of her clerk in court for the usual purposes, and may set forth what have or hath become of such of them as are or is not now in her possession custody or power.

And that the said defendant may answer the premises, and that the said will of the said testator may be established and the trusts thereof performed and carried into execution by and under the decree of this honorable court. And that an account may be taken of all and every the personal estate and effects of the said testator not specifically bequeathed, which have been possessed or received by or by the order or for the use of the said defendant or which without her neglect or default might have been received. And that an account may also be taken of all and every the lands and hereditaments which the said testator was seised and possessed of and entitled to at the respective times of making his will and of his death and of the rents and profits thereof which have or ought to have been received by the said defendant, and of the moneys which have been raised and received by or from the sale of the said lands and hereditaments or any part thereof. And that an account may be taken of all and every the funeral and testamentary expenses debts and legacies of the said testator. And that the said personal estate rents and profits and moneys may be applied in a due course of administration in payment of the said funeral and testamentary expenses debts and legacies. And that the amount of what is justly due and owing to the said tes-



tator's estate from the said defendant in respect of the said real and personal estate possessed by her may be ascertained; and that she may be charged therewith and may be compelled to pay the same. And that the said testator's personal estate now outstanding and so much thereof as remain in specie may be collected and converted into money, and may be invested and secured on the trusts of the said will, and that some proper person \*may be appointed to collect and receive the said personal estate. And that the said defendant may be ordered to deliver up the personal estate remaining in her hands to such person, and may be restrained from collecting and receiving such parts thereof as are outstanding, and that the said defendant may be removed from acting as a trustee under the said will; and that it may be referred to one of the masters of this honorable court, to appoint another person or persons to be trustee or trustees under the said will in the said defendant's place and stead. And your oratrixes and orators may have such further and other relief as the nature and circumstances of their case may require and unto your lordship shall seem meet. May it please your lordship, &c. [see forms No. 1 and 4, p. 6.] [ \*256 ]

*Pray subpoena and injunction against  
S. Till otherwise Tile.*

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LXXXI. *Bill by a trustee under a will, and legatees entitled under several wills to portions of a sum of stock standing in the account-general's name, produced by sale of an estate, two-fourth parts of a moiety whereof had been limited to T. C. and A. his wife for their lives; after their decease one-fourth to the appointment of T. C. and the other fourth to the appointment of A. C.; In default of appointment to A.'s right heirs. T. C. was afterwards found a lunatic, and an act of parliament was obtained for sale of his estates; he died without having experienced the power of appointment; A. C. also died, but having exercised the power reserved to her;—the prayer is to have the will of A. C. and the wills of several persons claiming under her, established—a transfer made to the plaintiff the trustee, and his co-trustee a defendant, of certain portions of the stock, and for a transfer of the remaining shares to the other plaintiffs; there being a pretence alleged of a will made by the lunatic; the bill also prays that an issue may be directed to try the validity thereof.*

States that by indenture bearing date —, and made between A. late the wife of T. C. gent. by the description of A. H. of, &c. widow, W. C. and E. his wife, W. H. and F. his wife, and M. late the wife of T. C., which said A. E. F. and M. were the cousins and co-heirs at law of Lord L. baron of A. in the kingdom of I. then lately deceased, of the one part, and W. B. of the other part, for the settling and assuring, &c. [being a deed of covenant to levy a fine by A. H. of one equal fourth part of the said manors, &c. to the use of A. H. in fee, and

Deed of covenant by A. H. to levy a fine.

*the other three-fourth parts to the appointment of W. C. and E. his wife, int. al.]*

Fine levied.

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That in pursuance of the said agreement a fine *sur conusance de droit come ceo*, &c. was levied of the said manor and premises as of — term in the — year of the reign of his late Majesty King George the Second, in which fine the said A. H. &c. were the conusors and the said W. B. was the conusee. And that the said \*A. H. continued solely seised in fee in her own right of the said one undivided equal fourth part of said premises until her intermarriage with T. C. of, &c. a lunatic, and since deceased.

That the said A. H. intermarried with the said T. C. on —, and the said M. intermarried with T. S. on the — day of the same month of —. And by indenture bearing date —, and made between said T. C. and A. his wife, and T. S. and M. his wife of the one part, and the said W. B. of the other part. [*Being the deed to levy a fine of a moiety of the premises comprised in the aforesaid indenture, to enure as to two-fourth parts of said moiety to the use of T. C. and A. for their lives and the life of the longest liver, and after their decease, one of the said two-fourth parts to the appointment of T. C. and the other to the appointment of A. and in default of such appointments to A.'s right heirs, and as to the remaining two-fourth parts of said moiety to T. S. and M. his wife for their lives, in the same manner as limited to T. C. and A.*]

That in pursuance of said agreement a fine *sur conusance*, &c. was levied of a moiety of said manors, &c. as of — term in the year —, in which the said T. C. and A. his wife and T. S. and M. his wife were conusors, and the said W. B. the conusee. And that the said T. C. and A. his wife by virtue of the said indenture of — and of the said fine, became seised in fee of two-fourth parts of the said moiety of the said manors and premises.

Commission of lunacy issued against T. C.

That the said T. C. having the misfortune to become disordered in his mind, a commission in the nature of a writ *de lunatico inquirendo* issued to enquire into his insanity, and by an inquisition taken thereon on, &c. it was found that the said T. C. was a lunatic, and that he did not enjoy lucid intervals so as to be sufficient for the government of himself and his estate. And that by virtue of a grant under the great seal of Great Britain, bearing date —, the custody of the person of the said T. C. was granted to the said A. his wife, and the custody of his estate was granted to the said W. C.

That the owners of the other parts of said premises were in the year — desirous of having said premises sold, but in case the said other — parts of said premises should have been sold separately from those belonging to said T. C. and A. his wife, the same would have been considerably diminished in value, and notwithstanding it was for the benefit of said T. C. and A. his wife and all persons who might claim any interest in the said one-fourth part of the said moiety of said premises belonging to the said T. C. that the said premises should be sold entire, yet by reason of the lunacy of said T. C. a good title could not be made to a purchaser of the said one-fourth part of the said moiety of said premises belonging to said T. C. without the aid of parliament, whereupon application was in —

made to parliament for an act for that purpose, and by an act intitled "An act for sale of the real estate of T. C. and A. his wife, and for laying out the money arising by such sale, in the purchase of other lands and hereditaments for the benefit of said T. C. and A. his wife," duly made and passed in the — year of his present Majesty's reign, it was amongst other things enacted that, &c.

\*That in pursuance of said act of parliament said premises were in — sold and conveyed to A. B. for £ —, and after deducting the expenses attending the procurement of the said act and sale, the residue of the money arising by sale of the said two-fourth parts of the said T. C. and A. his wife was in pursuance of said act, paid into the bank in the name of the accountant-general, and the same was afterwards by an order of — laid out in the purchase of £ — 3 per cent, consolidated bank annuities, which were transferred to and are now standing in the name of the said accountant-general on the trusts in the said act mentioned, and the dividends thereof were applied for the benefit of said T. C. and A. his wife during their respective lives.

That the said A. C. departed this life on, &c. leaving said T. C. her surviving, and the said F. H. widow and relict of said W. H. her heir at law: and having first made her will in writing bearing date, &c. whereby after reciting the power and authority given to her by said indenture of —, she by virtue thereof did give, &c. *[a third part of what she had power to dispose of to W. C. and E. his wife, and if they died in her life-time to the children of R. P. by E. his wife; the other third to W. H. and F. his wife, with the same limitation over in case of their deaths before the testatrix, and the remaining third she gave to said M. S. for life, remainder to the children of R. P. and said E. his wife, and appointed W. C. sole executor.]*

That the said F. H. who survived the said W. H. her husband, departed this life on, &c. leaving defendants E. T. widow and W. T. her heirs at law, having first duly made her will in writing bearing date, &c. and thereby amongst other things devised, &c. *[all that she was entitled to under the will of her sister A. C. to W. C. for life and after his death one-third of the moneys arising from the sale to be paid to M. B. M. one other third to T. S. and the remaining third to E. P. for life, remainder to all her children except M. F.]* And appointed R. M. husband of M. B. M. and W. H. executors of her said will, who proved the same in the proper Ecclesiastical Court, and thereby became her personal representatives and paid all her debts.

That the said W. C. who survived said E. his wife, died on, &c. leaving T. M. his heir at law, having first made his will bearing date, &c. and thereby among other things gave and devised, &c. *[all that he was entitled to under the will of A. C. to all the children of R. P. the elder as tenants in common]* and appointed W. H. and L. H. executors, defendants, who proved the same in the proper Ecclesiastical Court, and paid all his debts.

The said T. C. died on, &c. without ever having enjoyed any lucid intervals from the time of having been first found a lunatic,

An act of parliament passed to enable a sale to be made of the lunatic's estates.

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Sale made and the purchase-money invested in the funds in the accountant-general's name.

Death of A. C. leaving F. H. her heir at law; Her will.

Death of F. H. leaving E. T. and W. T. her heirs at law; Her will.

Death of W. C. leaving T. M. his heir at law; His will.

Death of the lunatic.

Title of the  
plaintiffs.

[ \*259 ]

The stock still  
remaining in  
the account-  
ant-general's  
name.

Pretence that  
the lunatic  
made a will  
before his lu-  
nacy.

Charge the  
contrary, or if  
made he de-  
stroyed the  
same.

Pretence that  
he destroyed  
it during his  
lunacy.

and without having executed such appointment as by said indenture of, &c. he was empowered to make; and that said F. H. as heir at law of said A. C. being by virtue of the limitations contained in said indenture in favor of her right heirs, well entitled to one moiety of said —l. or the lands to be purchased therewith, and also to one third part of the other moiety of the said sum of —l. by virtue of said A. C.'s will, and having survived said W. H. her husband, \*such the rights of said F. H. became under or by virtue of her said will (no appointment having been made by said T. C., vested in the plaintiff R. W. and defendant W. H. upon the trusts therein mentioned; and by virtue of the benefits contained in the wills of said A. C. and W. C. the plaintiffs R. P. the younger, W. P., &c. &c. became entitled to the other two-thirds of a moiety of said —l. or the lands to be purchased therewith as in the said two wills particularly mentioned.

That said E. T. is lately dead, leaving said defendant W. T. her heir at law, and also sole heir at law of said F. H. deceased.

That said —l. 3 per cent. annuities have not been laid out in the purchase of any lands, &c. but are still standing in the name of said accountant-general in trust in the said matter of A. B. the purchaser, and the dividends which have accrued thereon since the death of said T. C. up to, &c. amounting to —l., have been received by said accountant-general and placed to the credit of the said matter. And the plaintiffs being respectively interested in said —l. and the dividends thereof, hoped to have had the said bank annuities and said dividends transferred and paid accordingly, and that no opposition would have been made thereto; but that the said defendants A. C. and T. C. object thereto, under a pretence that they are interested in said stock and dividends, alleging that said T. C. before he became a lunatic, and on, &c. duly made his last will in writing in the presence of three subscribing witnesses, and thereby gave to them and to G. C. and H. C. who died in the life-time of T. C. —l. share and share alike, to be paid to them on the death of his said wife; and that said T. C. by said pretended will charged said one-fourth part of said moiety of said premises with the payment of said legacy, and that by virtue of said will which they allege is a due execution of the power reserved to him by said indenture of, &c. they are now entitled to be paid the said legacy of —l. out of said —l. 3 per cent. consolidated bank annuities.

*Charge the contrary*, and that said T. C. never did execute any will, or if he did such will was not duly executed and attested as required by said indenture of, &c. or as required by law for devising freehold estates, but if said T. C. ever executed such will and according to the terms of the power given him by said indenture of, &c. which plaintiffs do not admit, yet they *charge* that he afterwards destroyed or cancelled the same which the said defendants will sometimes admit.

*Pretence that he destroyed or cancelled the same during his insanity.*

*Charge the contrary*, and that if there ever existed such supposed will, the said T. C. destroyed or cancelled the same previously to his

lunacy, and whilst *compos mentis* and in some lucid interval. But even if the claim of said defendants could be substantiated, plaintiff R. M. and defendant W. H. allege that they are under said will of said F. H. entitled in trust to all such part of said moiety as is not effectually disposed of by said will, and that the said W. T. who is heir at law of said F. H. and also of said A. C., and T. M. who is heir at law of said W. C. make some objection to said stock and dividends being so transferred, alleging that the wills of \*said A. C. F. H. and W. C. were not executed so as to affect their interest therein, and that they are respectively entitled to some shares or interests therein, and of the dividends thereof or of the lands to be purchased therewith. And the said T. M. as heir at law of said W. C. the trustee named in the said act, also makes some objections to such transfer without the decree of this honorable court.

Charge the contrary.  
Claims set up by other defendants.

[ \*260 ]

And that the said wills of the said A. C., &c. may be established, and that it may be decreed that the said accountant-general do transfer to plaintiff R. M. and defendant W. H. upon the trusts aforesaid, one moiety and also one-third of a moiety of said — *l.* 3 per cent., &c. and pay them a just proportion of said dividends accrued due thereon since the death of said T. C. and to accrue due thereon before such transfer, and that he may also transfer the remaining two-thirds of one moiety of said — *l.* and the dividends thereof to or for the use of the plaintiffs R. P. the younger, W. P., &c. in equal proportions; and that in case any such will shall be pretended to have been made by said T. C. as aforesaid, then that an issue may be directed to try the validity thereof, and if such will shall be found on the trial of such issue to be valid, then that so much of said moiety as is not effectually disposed of may be paid to plaintiff R. M. and defendant W. H. with the dividends thereof, upon the trusts aforesaid. [*And for further relief see form VIII. p. 5.*] May it please, &c. [*see form No. 1, p. 6.*]

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\*LXXXII. *Prayer to have a will established, and the trusts thereof carried into execution, offering an issue; and in case such will should be found not duly executed (the testator having been of unsound mind for some time previously to his death) then praying to have a formal will established—also for an account of the testator's freehold, copyhold, and leasehold estates, and personalty debts, and legacies, and of the rents and personal estate received by defendants; Also for the appointment of new trustees in the room of those named in the testator's will, refusing to act; Also for a receiver as to the outstanding personal estate, and the rents of the real and leasehold estates; and for an injunction to restrain the defendants from receiving the same, or disposing of any part of the testator's property.*

And that the said will of the said testator bearing date 21st day of February — may be established, and the trusts thereof performed and carried into execution under the direction and decree of

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this honorable court; and if necessary, that an issue may be directed to try the validity of the said testator's will bearing date the 21st day of February —, and that all proper and necessary directions may be given for that purpose; and in case the said will of the 21st day of February — shall be declared not duly executed by the said testator, then that all proper and necessary directions may be given for establishing the said testator's will bearing date the 4th day of November —, or for trying the validity thereof; and that an account may be taken by and under the direction and decree of this honorable \*court of the freehold copyhold and leasehold estates which the said testator was seised and possessed of or entitled to at the time of his death, and also of his personal estate goods chattels and effects, and of his debts funeral and testamentary expenses and legacies; and that an account may in like manner be taken of all such parts of the rents and profits of the said testator's real and leasehold estates, and of his personal estate goods chattels and effects as have been possessed by or come to the hands of them the said A. B. C. D. R. E. C., &c. respectively and of their appropriation thereof; and that it may be referred to one of the masters of this honorable court to approve of one or more proper person or persons to be a trustee or trustees of the estate and effects of the said testator under his said will, in the room and stead of the said J. P. and C. D., who refuse to accept the trusts thereof and to act therein; and that one or more receiver or receivers may be appointed by this honorable court to collect get in and receive the outstanding personal estate and effects of the said testator, and the rents and profits of his real and leasehold estates; and that the said A. B. and C. D. R. E. C. &c. respectively may be restrained by the injunction of this court from receiving or possessing themselves of the rents and profits of the said testator's real and leasehold estates, and from selling or disposing of the same estates or any part thereof, and also from collecting and receiving any outstanding personal estate and effects of or belonging to the said testator and from assigning selling or parting with any part thereof, or any other personal estate and effects of or belonging to the said testator now in their custody possession or power, or of any person or persons in trust for them, or for their use. [And for further relief.]

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\*LXXXIII. *Prayer of a bill to carry the trusts of a will into execution, and to have the rights of all parties in the testator's real and personal estates ascertained—an account taken of the personal estates, debts, &c. and to have the clear residue ascertained and invested—an account taken of the real estate—and to have the rents secured during plaintiff's minority—Also that certain defendants may elect, and that if they should elect to confirm the will, that they may do all necessary acts for that purpose, and if they should claim against the will, then that the benefits given to them by the will, may be secured for the plaintiff, or that he may be compen-*

*sated thereout for what he may lose by such election; and that a receiver may be appointed of the rents of the real estates.*

And that the said will and codicil of the said testator may be established, and the trusts thereof performed and carried into execution, and that the rights and interests of your orator and of all parties under the same in the real and personal estate of the said testator may be ascertained and declared by the decree of this honorable court; and that an account may be taken by and under the direction of this honorable court of all the personal estate and effects of the said testator and of the rents and profits of his real \*estates come to the hands of the said defendants or any of them, or by their or either of their order, or for their or either of their use, and also of the funeral expenses and debts of the said testator; and that the clear residue of the said testator's personal estate and effects may be ascertained, and that the same may be invested and secured for the benefit of your orator; and that an account may be taken of the real estates to which your orator is entitled under the said will, and that the rents and profits thereof may be secured for your orator's benefit during his minority; and if the said defendants M. W. W. C. W. R. E. and A. his wife or any of them shall appear to have any right to or interest in any of the estates which the said testator has disposed of or assumed to dispose of by his said will in favor of your orator, that it may be declared that they are bound to elect conformably to the will, or to renounce in favor of your orator the benefits given to them respectively by such wills; and if they shall elect to confirm the will, that they may be decreed to do all such acts as may be necessary for confirming your orator's title to the estates so devised; and if they shall claim against the said will, that the benefits given to them respectively by the said will may be secured for your orator, or otherwise that he may be compensated thereout for what he may lose by the election of the said defendants to claim against the said will; and that if necessary a proper person may be appointed receiver of the rents and profits of the said testator's real estates, with all usual directions. [*And for further relief.*]

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#### LXXXIV. *Allegation of debts due on bond and to the crown.*

And the said defendants allege that the said testator was in his life-time and at the time of his death greatly indebted on bond and otherwise, and particularly that a large sum of money was due and owing from him to his Majesty in respect of the balance of the said testator's accounts as receiver of the land-tax and otherwise; and his Majesty's Attorney-general on behalf of his Majesty claims a large debt to be owing to his Majesty on such account, but refuses to discover the particulars of such debt, &c.

And that his Majesty's Attorney-general may answer and set forth whether any and what sum of money is now remaining due to his Majesty in respect of any and what debt or debts which was or were in any and what manner and on what account owing to his Majesty from the said testator at the time of his death; And whether the whole or any and what part of such money was secured by any and what deed or deeds writing or writings, and when and by whom executed, and may set forth the dates and material contents thereof.

[ \*263 ] **\*\*LXXXV.** *Interrogatories for an account of testator's real estates, the rental thereof, and incumbrances thereon—for an account of his personal estate, and the application thereof—for an account of debts and what remain due, and of books, accounts, &c. Prayer to have the trusts of the will performed, an account taken of the personal estate, and the annual produce thereof, and of the testator's debts, &c.—that the personal estate may be first applied in payment of debts and legacies, and in case of a deficiency, that the same may be paid out of the rents of the real estate, or by sale of a sufficient part thereof—that an account may be taken of the annuities given by the will, and the arrears paid out of the rents of, or in case of a deficiency, by sale of a sufficient part of the residuary real estates, and for payment of the annuities according to their priorities—for a receiver as to the outstanding personal estate, and the rents of the real estate, and for an injunction to restrain the acting executor also residuary legatee, and the surviving trustee of a (term for raising the annuities, from collecting in the outstanding personal estate, and the rents of the real estate.*

Interrogatories as to the real estates and the rental thereof.

As to incumbrances and in whom vested.

As to the rents and profits and by whom received.

And that the said E. H. and B. H. may set forth whether the said testator J. H. was not at the time of his death seised or entitled in fee-simple of or to some and what real estates, and may also set forth a full just and true rental and particular thereof, and where every part thereof is situate, and the yearly value of each particular thereof, and in whose hands the same and every part thereof now is, and under what yearly or other rents or rent; And whether they the said defendants or some or one or which of them are or is not now and for some and how long time past and from and to what time have or hath been in possession or receipt of the rents and profits thereof or of some and what part thereof, or who by name now are or is, and for how long time have or hath been in possession and receipt of the rents and profits thereof, and by what right or title, and for whose life; And that they may also set forth the names and places of abode of all and every person and persons in whom any legal or equitable estate right or interest charge or incumbrance to in or upon the said real estate or any parts or part thereof in possession reversion or remainder is vested, and the particulars of such estate right title or interest charge or incumbrance, and how and in what manner the same became vested in such persons or person, and under what deeds or deed writings or



writing; And that the said defendants E. H. and B. H. may set forth a full true and particular account of all and every sum and sums of money which have been received by them or either of them or any other person or persons by their or either of their order or for their or either of their use, for or in respect of the rents and profits of the said estates or any part thereof, which have become due since the death of the said testator J. H. and when and by whom and for whose use, and from and for what rent and of what part of the said estates and premises, and when due, all and every such sums were respectively received; And that the said defendant E. H. may set forth a full just and true inventory and account of all and singular the goods and chattels personal estate and effects whatsoever, \*which the said testator was possessed of entitled to or interested in at the time of his death, and all the particulars whereof the same consisted, and the quantities qualities full real and true values thereof, and of every such particular; And whether all or some and which of such particulars have not and when been possessed or received by or come to the hands of him the said defendant E. H. or some and what person or persons by his order or for his use; and how and in what manner and when and where and by and to whom and for how much the same and every or any and what part thereof hath been sold and disposed of; And whether any and what parts thereof and to what value or amount now remain undisposed of, and what is become thereof; and also a particular account of the debts which were justly due and owing from the said J. H. at the time of his death, and to whom and for what and on what securities (if any) the same were respectively due; And whether any and what sums of money have been since paid in or towards the discharge of all or any and which of such debts, and when and by whom and to whom and for what; And whether any and what sums or sum of money do or doth now remain unpaid on account thereof; And whether the said E. H. and B. H. or one and which of them have or hath not now or had not lately and when last in their or one and which of their possession or power, divers or some and what title-deeds evidences and writings deed evidence or writing of or relating to the said real estates or the title thereto; And whether or not divers or some and what accounts books of account letters receipts vouchers documents and writings account book of account letter copies or copy of extracts or extract from letters or a letter receipt voucher document or writing relating to the matters aforesaid or some and which of them; And that the said last named defendants may set forth a full and true list or schedule of all the said deeds and evidences deed and evidence accounts books of account letters receipts vouchers documents and writings account book of account letter copies or copy of and extracts or extract from letters or a letter receipt voucher document and writing that now are or is or ever were or was in their or either of their possession or power, distinguishing such of them as now are or is in their possession or power, and may set forth what have or has become of such of them as are or is no longer in their or either of their possession or power.

As to the personal estate,

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And the application thereof.

As to the amount undisposed of.

As to the debts due from the testator and on what securities, and what remain due.

As to title-deeds, accounts, &c.

And that the trusts of the said testator's will may be performed Prayer.

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and carried into execution. And that an account may be taken by and under the direction and decree of this honorable court of the personal estate and effects of the said testator J. H. and the interest and income thereof since his death and of his debts funeral and testamentary expenses and legacies. And that the said testator's personal estate may be declared applicable in the first instance in payment of his debts funeral and testamentary expenses and legacies so far as the same will extend for that purpose, and the deficiency (if any) be paid out of the rents and profits of the whole of the said testator's real estates or by sale or mortgage of sufficient proportionate parts thereof. And that an account may be taken of the several annuities given by the will of the said \*testator and of the arrears now due and owing upon the same respectively. And that such arrears may be paid out of the rents and profits of the said residue of the said testator's real estates charged with the payment thereof, or in case such rents and profits received by the said E. H. and B. H. shall not be sufficient for that purpose, then that such deficiency may be raised by sale or mortgage of the said residue of the said real estates or a sufficient part thereof, according to the directions of the said testator by his will; and that your oratrix and the said annuitants may be paid their several annuities for the future out of the residue of the rents and profits of the said last-mentioned estates, according to the priority directed by the said testator's will; and that one or more receiver or receivers may be appointed by this honorable court of the outstanding personal estate and the rents and profits of the real estates of the said testator, with all proper and necessary directions; and that the said E. H. and B. H. may be respectively restrained by the injunction of this honorable court from collecting in and receiving the outstanding personal estate and the rents and profits of the real estates of the said testator or any part thereof; and that all proper and necessary directions may be given by this honorable court for effectuating the purposes aforesaid. [*And for further relief.*]

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LXXXVI. *Statements and charges in a bill filed by executors for their indemnity on account of the conflicting claims of the legatees entitled to the residuary estate, and other persons also claiming to be entitled thereto.*

That the residuary legatees have attained twenty-one.

That the said E. K. departed this life on, &c. and the said J. K. &c. &c. the residuary legatees named in the said will of the said testator as aforesaid have all attained their respective ages of twenty-one years, and the said residuary legatees are now become entitled to have their respective shares of the said residuary property paid to them.

Statement of what the residuary estate consists,

That the said testator's residuary property now consists of the sum of £—— 3 per cent. consolidated bank annuities, and the sum of £—— in the hands of *plaintiffs*, and *plaintiffs* are ready and willing

to divide and dispose of the said residuary property according to the directions contained in the testator's will.

That E. S. and J. S. claiming to be entitled to some interest in the property to which the said — is entitled in right of his said wife of and in the said testator's residuary property under an assignment made to them by the said C. F., served a notice in writing to that purport on plaintiff J. S. As by the said notice, &c. and of claims made by the defendants and the notices served on plaintiffs.

That on, &c. another notice was served on *plaintiffs* by Messrs. G. and I. of, &c. claiming the said share of the said C. F. in right of M. his wife by virtue of an assignment from the said E. S. and I. S.; but the said Messrs. G. and I. having since become bankrupts, another notice was served on plaintiff's solicitor on, &c. by Messrs. W. and Son the solicitors under the commission of bankrupt awarded against the said G. and I. purporting that W. C., &c. having been duly chosen and appointed assignees of the estate and effects of the said G. and I. claimed the said share of the said C. F. and his said wife in right of the said G. and I. As by the said two notices, &c.

[ \*266 ]

That on or about, &c. a notice was served upon *plaintiff* by W. G. of, &c. stating a certain assignment made by the said — to N. S. of, &c. under and by virtue of which the said R. S. claimed to be entitled to some interest in the said share of the said A. and M. his wife of and in the said residuary property. As by the said notice, &c.

That by reason of such several claims *plaintiffs* are unable to distinguish to whom the said residuary property ought to be distributed; but *plaintiffs* being ready and willing to distribute the same have frequently, applied to the said, &c. &c. (*the claimants*) and also to the said, &c. (*the residuary legatees*) and also to the said, &c. the several assignees who have so served *plaintiffs* with notices and made claims as aforesaid, and have requested them to settle or adjust their said several claims and demands, that *plaintiffs* might be enabled to distribute the said residuary estate accordingly. But the said defendants refuse to comply with such requests, and they pretend that no such will as hereinbefore set forth was made by the said H. M. *Charge the contrary thereof to be true*, and which defendants will at other times admit but then they pretend that there is a very large residue in the hands of *plaintiffs*, and much more than the said sum of £—. *Charge the contrary thereof to be true*, and that no more now remains than the said sums hereinbefore in that behalf mentioned, except what (if any thing) may have come to the hands or possession of the said I. S. And the said defendants, &c. severally claim to be entitled to the said share of the said C. F. and M. his wife, and the said I. K., &c., claim to be entitled notwithstanding the said assignment of their shares of the said residuary property as residuary legatees, and the said defendant I. K. sometimes claims to be further interested in the said residuary estate and effects, and the said defendant F. S. refuses to come to any account in the premises.

Applications to the defendants to adjust their claims.

Refusals.

Pretence that no will was made.

Charge the contrary.

Pretence that there is a much larger surplus in plaintiffs' hands than they admit.

Charge the contrary.

Claims made on the part of the defendants.

LXXXVII. *Pretences and charges where the will is disputed by the heir at law.*

Pretence that A. B. did not make the will, or that he was not of sound mind or was imposed upon.

Charge the contrary—that he did make the will, was of sound

[\*267] mind, and not imposed upon; and that it was prepared from his instructions, and was well understood by him.

But then he pretends that the said A. B. did not make such will in writing, or however he was not of sound and disposing mind and memory at the time of making the same, or that he was imposed upon in the making thereof, and therefore the same ought not to have any effect as his will, and consequently that neither of your orators had any right to the said premises; but that upon the death of the said testator the said messuages, &c. descended to him the said defendant as the said testator's heir at law. Whereas your orators charge the contrary of all such pretences to be true, and that the said A. B. did in fact make such last will and testament as aforesaid, and that he was at the time of making the same of sound \*and disposing mind memory and understanding,(8) and that he was not in any manner imposed upon therein or in relation thereto, and that the same was prepared by his direction, and from instructions given by him, and that the same was read over by him or some person in his hearing before or at the time of his executing the same, and that he then well knew and understood the contents and meaning thereof.

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\*14. BILLS BY, AND AGAINST, LORDS OF MANORS.

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LXXXVIII. *Bill by the lord of the manor of S. against the lord of the adjoining manors—Praying to have the boundaries of plaintiff's manor ascertained, and for a commission for that purpose; (1) —also for an injunction to restrain the defendant from cutting down trees, or committing waste on the plaintiff's manor.*

In the Exchequer.

To, &c.

Humbly complaining sheweth unto your honors your orators E. H. of, &c. debtor, &c. [see form No. 2, p. 2.] That your orator now

(8) Where a will is to be established as to real estate, it is necessary to prove that the testator was of sound and disposing mind; *Wallis v. Hodgeson*, 2 Atk. 55; *Harris v. Ingledew*, 3 P. Wms. 92, and the cases referred to in note (x) *ibid.* 6th edit. proving it to be well executed according to the statute of frauds and perjuries, is not sufficient.

(1) A bill does not lie for the mere purpose of settling the boundaries of two manors; *Wake v. Conyers*, 2 Cox, 360, S. C. 1 Eden, 331; all the cases where the court has entertained bills for establishing boundaries have been where the soil itself was in question, or there might have been a multiplicity of suits.

The granting commissions to ascertain boundaries is a very ancient branch of equitable jurisdiction, but the courts have always been very cautious in the exercise of it; it is therefore necessary to suggest some equitable circumstance, as that the lands lie intermixed, that fences have been thrown down, boundaries ploughed over, &c.; but it has always been refused in the case of manors and parishes; see

is and for some time hath been and his ancestors for many years previously were seised in fee of the manor or lordship of S. in the parish of S. in the said county of G. together with all waifs and estrays and all other the rights royalties members and appurtenances thereto belonging or appertaining, and particularly to all the timber and trees standing and growing upon all the lands parcel of the said manor or lordship. And your orator further sheweth that the right honorable F. A. earl of B. now is or claims and for many years hath been or claimed to be and his ancestors for many years were or claimed to be seised in fee of the manors or lordships of B. C. \*and B. adjoining to the said manor of S. in the said county of G. together with all the rights royalties members and appurtenances thereto respectively belonging or appertaining, and particularly to all the timber and trees standing and growing upon all the lands parcel of the said last-mentioned manors or lordships respectively. And your orator further sheweth that the said earl of B. hath lately without the knowledge privity consent or approbation of your orator felled and cut down or caused to be felled and cut down a certain tree which was standing and growing in the said parish of S. and upon part of the lands parcel of the said manor or lordship of S. and which said tree belonged to your orator as lord of the said manor of S., and the said earl of B. sold the same for a large sum of money which he received, or else he converted and disposed of the said tree to and for his own use and benefit, under a pretence that the same was standing and growing upon part of the lands parcel of the said manors or lordships of B. C. and B. or some or one of them, or upon part of the lands parcel of some other manors or manor of or belonging to him the said earl. And your orator further sheweth that the boundaries of the said manors or lordships of B. C. and B. respectively and of such other manors or manor of or belonging to the said estate as aforesaid, and also the boundaries of the said manor of S. have by great length of time and divers circumstances and accidents been so obscured and confounded that your orator cannot ascertain the boundaries of the said manor of S. or distinguish the same from the boundaries of the said manors of the said earl of B.; but the said earl of B. from divers deeds and writings maps plans terriers or an ancient land-roll or survey of lands books and papers in his custody or power and otherwise, is able and can ascertain and distinguish the same and the boundaries thereof respectively, and whether any and what parts or part in particular of the said parish of S. appertain or belong to the said manors or lordships of B. C. and B. or to any and which of them respectively, or to any other and what manors or manor in particular of or belonging to him the said earl; however the said earl refuses to ascertain the same. And your orator charges that the same cannot be ascertained without the assistance of this honorable court. And your orator further charges that when the said tree was cut

That plaintiff and his ancestors have for many years been seised in fee of the manor of S.

Defendant claims to be seised of the adjoining manors.

[ \*268 ]

Defendant cut down a tree growing on plaintiff's manor, and sold the same.

The boundaries of the manors confused.

That defendant from certain deeds, &c. can ascertain the same.

Charge that plaintiff applied to defend-

the notes to p. 335, 7, 1 Eden's Rep. and the cases there referred to. *Waring v. Hoatham*, 1 Bro. Ch. Ca. 40. And see also *Speer v. Crawler*, 2 Mer. 410; *Dr. Willis v. Parkinson*, *ibid.* 507; S. C. on motion to extend the decree to copyhold as well as freehold lands, 3 Swanst. 233.

dant's agent  
to desist from  
committing  
trespass.

That the  
boundaries  
cannot be as-  
certained at  
law.

Charge as to  
deeds, &c. in  
defendant's  
possession.

[ \*269 ]

Applications  
made to the  
defendant.

Prayer.

down your orator asked the agent of the said earl whether if your orator brought an action for the same or for the trespass committed by cutting the same and succeeded therein, the said earl would decline committing any further trespass, and such agent answered that the said earl would time after time commit acts of trespass and try the boundaries of your orator's said manor inch by inch, or to that effect, and he was directed or authorized or encouraged by the said earl to say so or the said earl approved of what he so said when he heard thereof. And your orator charges that it is impossible to ascertain the boundaries of your orator's said manor at law, or at least without a great multiplicity of actions. And your orator also charges that the said earl now has or lately had in his custody or power several deeds and writings which show describe and ascertain the said manors or lordships of B. C. and B. respectively, and the \*said other manors or manor of or belonging to him the said earl as aforesaid and the boundaries thereof respectively, and also the boundaries of the said manor or lordship of S. and which would clearly distinguish the same and show the extent of each of them, and whether any and what parts or part in particular of the said parish of S. appertain or belong to the said manors or lordships of B. C. and B. or to any and which of them respectively, or to any other and what manors or manor in particular of or belonging to him the said earl, if he would produce the same to your orator, but which he absolutely refuses to do, although he hath been repeatedly applied to for that purpose by and on the behalf of your orator. To THE END therefore, that, &c. [*Proceed as in p. 9, antea; interrogating to the statements and charges.*]

And that the said earl may answer the several matters aforesaid; and that the said manor or lordship of S. and the boundaries thereof may be distinguished and ascertained; and that a commission or commissions may issue out and under the seal of this honorable court directed to certain commissioners therein named, for the purpose of distinguishing and ascertaining the same, and that all proper directions may be given relating thereto. And that the said earl his servants and workmen may be restrained by the injunction of this honorable court from felling or cutting down or causing to be felled and cut down any timber or trees standing and growing in the said parish of S., and particularly upon all or any of the lands parcel of the said manor or lordship of S., and from committing any waste or spoil therein or thereon. [*And for general relief, see form VIII. p. 5.*] May it please, &c. [*See forms No. 3 and 5, p. 6 & 7.*]

R. R.

LXXXIX. *Bill by the lord of the manor of S. for an account and payment of the arrears of a certain ancient yearly rent of — per acre called culler-rent payable in respect of certain freehold lands within the manor.—Charging that plaintiff is unable to distinguish those lands from others belonging to the defendant in respect whereof no such rent is payable; and that plaintiff is unable to proceed at law and distrain for the rent.*(2)

States that *plaintiff* is and for the space of — years past hath been seised in fee or of some good estate of inheritance of or well entitled unto the manor of S. in the county of S. with the appurtenances, and of and to divers lands and tenements, and various rents and services thereto belonging and incident. That plaintiff is seised in fee of the manor of S.

That there are divers freehold lands and tenements situate in the several hundreds of A. B. and C. which are and from time immemorial \*have been situate within and holden of the said manor of S. in respect of which lands and tenements a certain ancient yearly rent of — an acre called culler-rent is and from time immemorial hath been payable, and ought to have been paid on Michaelmas-day in each year by the respective owners of the said lands and tenements to the lord of the said manor for the time being. That a culler-rent is payable in respect of certain lands holden thereof. [ \*270 ]

That it is and from time immemorial hath been customary for the lord of the said manor for the time being or his steward to keep or hold a court-leet and court-baron within and for the said manor, on — yearly, at which a freeholder is appointed culler to collect the said customary payment of — an acre, and to pay the same to the said lord or his steward. A freeholder appointed culler annually at a special court to collect the rent.

That a great part of the said rent of — an acre has accordingly from time to time been paid by the respective freeholders of the said hundreds for the lands by them respectively holden of the said manor.

That the defendant during all the time that *plaintiff* hath been seised of or entitled to the said manor, hath been and now is seised of or well entitled to the freehold messuage and pieces or parcels of land and tenements hereinafter mentioned, (that is to say,) &c. all which are situate in the said hundred of A. and are in the tenure or occupation of defendant or of some person or persons holding the same of him, and all which premises with the appurtenances now are and always have been holden of the said manor of S. under the said yearly rent of — an acre payable at Michaelmas-day in each year according to the old style; and such rent was duly paid for the said premises to or for the use of the lords of the said manor for the time being, until *plaintiff* became seised thereof or entitled thereto. But that ever since that *plaintiff* has been seised of or entitled to the said manor the said defendant hath from time to time neglected or omitted to pay the same yearly rent to *plaintiff*, and Defendant seised of certain freehold lands holden of the said manor, under the said rent, which was duly paid until plaintiff became seised of the manor.

(2) See *North v. Earl of Strafford*, 3 P. Wms. 148, 6th edit. and the cases referred to in the notes; 1 Madd. Ch. Pr. 28.

Defendant  
seised of other  
lands, not lia-  
ble to the rent.

Plaintiff un-  
able to distin-  
guish the par-  
ticular lands  
liable.

Applications  
to the defend-  
ant.

Pretence that  
the particular  
lands are not  
subject to the  
rent, but that  
he holds other  
lands liable  
thereto.

[ \*271 ]

Pretence that  
no rent has  
been paid for  
a long time  
and is not now  
payable.

Charge that  
the particular  
lands are still  
liable, and  
that the rent  
was paid for  
them until  
plaintiff be-  
came lord of  
the manor.

That a former  
proprietor  
paid the rent.

Charge a pre-  
sentment  
made by a jury

that defendant is seised of or entitled to divers other lands and hereditaments within the said hundred of A. besides those hereinbefore mentioned, and in respect of which no cullier-rent is due or payable to the said lord of the manor of S. And *plaintiff* by reason of the neglect of former stewards or bailiffs of the said manor is unable to distinguish the said lands in respect of which the said cullier-rent is payable from the other lands of the said defendant of which no such rent is payable. But *plaintiff* being well entitled as aforesaid hath applied to defendant and requested him to pay what is due from him to *plaintiff*, for the arrears of the said rent in respect of the said premises belonging to him for which the said rent is payable, and to discover to him which are the particular lands liable or subject to the payment of the said rent. And *plaintiff* well hoped that the said defendant would have complied with such your orator's reasonable requests, as in justice and equity he ought to have done. BUT NOW SO IT IS, &c. [See form IV. p. 5.] And the said defendant pretends that the said premises before specified, are not nor ever were holden of the said manor of S. or subject to such yearly rent as is above stated or any other rent. And at other times the said defendant pretends that some part only of the said premises, or that some other lands or tenements which belong to him has or have \*been and is or are holden of the said manor, but what such part is or what such other lands are he refuses to discover. And the said defendant also pretends that no cullier-rent or other rent has been paid for a great length of time past to or for the use of the said lord of the said manor for or in respect of any lands or tenements belonging to him within the said manor, and that therefore the same is not now payable and that *plaintiff* cannot insist on the payment thereof. Whereas *plaintiff* charges that the premises before specified or the greatest part thereof have or has always been and now are or is holden of *plaintiff's* said manor, and under or subject to the payment of the said yearly rent of — an acre or some such rent, and that such yearly rent was always heretofore paid for the same by or on the behalf of the owner of the said premises or such part thereof for the time being, to the use of the lord of the said manor for the time being, and continued to be so paid until the time that *plaintiff* became lord of the said manor or thereabouts. And *plaintiff* further charges that M. A. deceased under whom the defendant became seised of or entitled to the said premises, as his immediate successor or in succession to some other person or persons who was or were in the possession of the said premises between the time when the said M. A. was last seised and the time when defendant was first seised of or entitled to the said premises, paid the said rent in his life-time and to the time of his death, and that defendant has paid the same since he became seised of and interested in the said premises. And as evidence of the said premises being within or belonging to the said manor and holden of the lord of the said manor, and that such rent is payable in respect of the said premises, *plaintiff* further charges that in and by a further presentment of lands within the said hundred of A. belonging to the said manor and holden of the lord of the



said manor at or by the said rent of — an acre, which was made and signed by twelve jurors freeholders of the said hundred of A. and given in and by them at a court-leet and court-baron holden for the said manor on —, before R. S. the then steward of the said court, all the premises above specified are mentioned and specified as being within the said hundred of A. and belonging to the said manor and holden of Y. Z. the then lord of the said manor at and under the several yearly rents therein specified, being in the proportion and after the rate of — per acre for all the said premises; But in case the payment of the said yearly rent of — per acre in respect of the said premises, or any part thereof, was discontinued or omitted for any time before *plaintiff* became seised of the said manor and which *plaintiff* does not admit, *plaintiff* charges that some culyer or cullyers for the time being of the said manor of S. was or were in some manner connected with or influenced by the said defendant or some former owner or owners of the said premises and therefore neglected or omitted to collect the said culyer rent for the said premises or such part thereof as was liable thereto. And *plaintiff* further charges that the said culyer-rent has within — years last past been paid by or on the behalf of the former owner or owners of the said premises or some \*part or parts thereof, or of some other lands belonging to the defendant within the said manor to or for the use of some lord or lords of the said manor for the said premises or some part or parts thereof or for such other lands. And *plaintiff* further charges that defendant hath in his custody or power divers or some receipts or discharges for the said culyer-rent, and also divers or some deeds evidences entries and memorandums and other papers and writings by which it appears that the said premises or some part or parts thereof, or some other lands belonging to him are or is holden of the said manor and under the said yearly rent, and that such yearly rent has heretofore and within — years last past been paid for the same; and defendant well knows the aforesaid matters to be true but refuses to discover the particular lands belonging to him which are holden of the said manor under the said yearly rent. And *plaintiff* for want of knowing with certainty and not being able to prove the identity of the lands belonging to defendant which are holden of the said manor and subject to the said yearly rent is unable to proceed at law and distrain for the arrears of the said rent. All which actings, &c. [see form VI. p. 5, *interrogating to the stating and charging parts; and after the interrogatory as to the receipts, deeds, &c., in the defendant's custody, proceed thus:*] And that the said defendant may set forth the same or all such parts of them as relate to the said rent or the payment thereof for the said premises or any of them, and such other lands or any part thereof, and all such receipts and discharges in the words and figures thereof, and may leave all such deeds, &c., in the hands of his clerk in court for the usual purposes; And that he may set forth a true perfect and exact account or terrier of all the lands and tenements belonging to him or which he is in anywise seised of or entitled to situate within the said manor and holden thereof under and subject to the said yearly rent, and may distinguish the boundaries of all such lands

of freeholders of lands liable to the rent including the defendant's.

That the rent was neglected to be collected by former cullyers.

That the former owner paid the rent until within — years.

[ \*272 ]

Charge as to receipts, deeds, &c. in defendant's possession.

Plaintiff unable to distrain for the arrears.

Interrogatory requiring defendant to set forth receipts relating to the rent and to produce deeds, &c. and a terrier of all the lands held by him subject to the rent.

and tenements and the names of the occupiers thereof, and may set forth when last and by whom and to whom the said yearly rent was paid for the same respectively.

Prayer.

And that an account may be taken of the arrears of the said yearly rent due and payable from the said defendant to the *plaintiff* as lord of the said manor of S. for the said lands and tenements belonging to the said defendant in respect whereof the said rent is payable, and that the said defendant may be decreed to pay unto *plaintiff* what shall appear coming from him the said defendant to the *plaintiff* on the taking of the said account. [*And for further relief see form VIII. p. 5.*] May it please, &c. [*see form No. 1, p. 6.*]

[ \*273 ] \*\*XC. *Bill by the lord of a manor against two copyhold tenants coparceners, in possession of thirty-one copyhold tenements, charged with having thrown down the boundaries thereof, by which means the copyhold lands have become intermixed with their freehold estates. Prayer for a discovery and account of the quantity and value of coals iron-stone and other minerals procured by them from their copyhold estates in conjunction with certain coal masters who are also made defendants, as claiming under a lease granted to them by the other defendants;—Also for an injunction to restrain the defendants from working the veins of coal lying in their copyhold estates,—the plaintiff waiving all forfeitures.*(3)  
(*The interrogatories are inserted.*)

To, &c.

That defendants M. P. and P. P. and their deceased sister E. W. were admitted to thirty-one tenements, as co-heiresses of W. F.

Humby complaining sheweth unto your lordship your orator F. P. of, &c. lord of the manor of O. W. in the county of S., That at a court baron held in and for the said manor of O. W. on the 12th day of July — M. P. the wife of E. P. of, &c. (then M. F. spinster) P. P. of the same place widow (then P. F. spinster) and E. W. late of, &c. widow, deceased (then E. F. spinster) were duly admitted tenants to thirty-one copyhold or customary estates or tenements, situate lying and being within the manor of O. W. aforesaid, as the co-heiresses at law of W. F. then late of, &c. aforesaid gent. deceased, and called or known by the names and descriptions of a close or parcel of land containing &c. &c. All which said premises were theretofore in the tenure of W. M. To hold to them the said M. P. P. P. and E. W. their heirs and assigns for ever, according to the custom of the said manor, as tenants in common and not as joint tenants, of the lord aforesaid, by the rents suits of court customs and other services theretofore due and of right accustomed. And your orator further sheweth unto your lordship that the said E. W. de-

Death of E. W.

(3) See *Watk. on Copyholds*, ed. by Coventry, vol. i. p. 404, 5, and notes; *Peachy v. Duke of Somerset*, 1 Strange, 447, 454; S. C. 1 Cru. Dig. 346; *Richards v. Noble*, 3 Mer. 673; *Grey v. Duke of Northumberland*, 13 Ves. 236, 2d edition; S. C. 17 Ves. 281; *Bourne v. Taylor*, 10 East, 188.

parted this life in or about the year —, and thereupon the said M. P. and P. P. claimed to be entitled to the one-third part or share then late of the said E. W. deceased, of and in the said thirty-one copyhold or customary estates or tenements holden of the said manor of O. W. as the sisters and co-heiresses at law of the said E. W. deceased and were afterwards duly admitted tenants to the same one-third part or share of and in the said thirty-one copyhold or customary estates, To hold unto them their heirs and assigns for ever, according to the custom of the said manor, as tenants in common and not as joint tenants, of the lord aforesaid, by the rents suits and services theretofore due and of right accustomed. And your orator further sheweth unto your lordship that there are situate lying and being in upon or under the said thirty-one copyhold or customary estates to which the said M. P. and P. P. have been so admitted as aforesaid, or under \*several of them or some part or parts thereof, certain veins or seams of coal culm and iron-stone and other minerals of great value, the absolute property whereof is now vested in your orator as lord of the said manor of O. W. And your orator further sheweth that the said E. P. and M. his wife and P. P. have lately and without the license or consent of your orator opened the said veins or seams of coal or culm and iron-stone, or authorized or permitted the same to be opened, and have worked dug up or procured and carried away and authorized or permitted to be worked dug up or procured and carried away from off and out of the said several copyhold or customary estates great quantities of coal culm and iron-stone and other minerals, which they have since sold and disposed of for their respective use and benefit for very considerable sums of money. And your orator being so as aforesaid well entitled to the said coal culm and iron-stone and other minerals and to the profits or produce thereof, your orator hath frequently by himself his steward and agents applied to the said E. P. and M. his wife and P. P. and in a friendly manner requested them to account with him for the several quantities of coal culm and iron-stone and other minerals so dug up and procured and sold or disposed of by them respectively, and to discontinue from raising or digging up and procuring any further or other coal or culm or iron-stone or other minerals from the said several copyhold or customary estates to which the said M. P. and P. P. were so as aforesaid admitted at the said several courts baron, your orator being willing to waive any forfeitures which the said M. P. and P. P. might have incurred of their said estates by reason of such proceedings. BUT NOW SO IT IS may it please your lordship that the said E. P. and M. his wife and P. P. combining and confederating to and with A. P. of, &c. coal master, D. P. of, &c. coal master, and G. P. of, &c. coal master and also to and with divers other persons, &c. [See form IV. p. 5,] they the said E. P. and M. his wife, and P. P. absolutely refuse to comply with such your orator's reasonable requests, and to color such refusals they pretend that the veins or seams of coal and iron-stone and other minerals lying in and under the said several copyhold or customary estates in their tenure or occupation or of their under-tenants have never been opened or worked by them or by their direction or for their benefit, but that

and admission of M. P. and P. P. as her co-heiresses at law to her one-third share.

Veins of coal, &c. lying in their estates the property whereof is vested in the lord of the manor.

[ \*274 ]

The same opened without his consent.

Applications.

Pretence that the veins of coal have never been opened, but that the coal

sold by the defendant was raised out of their freehold lands adjoining.

Charge the contrary.

That the freehold lie intermixed with the copyhold lands, the boundaries whereof have been thrown down.

[ \*275 ]

That by means of shafts sunk on the freehold and copyhold lands the defendants have raised large quantities of coal from their copyhold estates.

Pretence that coals have been immemorially dug for.

Charge the contrary.

Charge an admission made by one of the defendants as to her knowledge of the first coal pit being sunk.

As to the persons who sunk the first pit; and the defendant's knowledge that no custom existed enabling copyholders to dig for coal.

Pretence that the coal raised was of small value, and that the plaintiff or his steward granted a licence.

the coal culm and iron-stone and other minerals so sold by them as aforesaid were raised and procured from some freehold lands also in their own occupation and lying contiguous to the aforesaid copyhold estates. Whereas your orator charges the contrary of such pretences to be the truth. And your orator further charges that the freehold lands belonging to the said M. P. and P. P. in, &c. aforesaid, lie intermixed with and undistinguished from the aforesaid several copyhold estates so as aforesaid belonging to them and holden of the said manor of O. W.; and that the boundaries of the said copyhold estates have been thrown down or improperly neglected by the said M. P. and P. P. for the purpose of rendering the same undistinguishable from the said freehold lands; and that by means of shafts or pits and engines and other machinery sunk and erected \*by the said several defendants as well on the freehold parts of the said lands as also on the said copyhold estates or some parts thereof, the said defendants E. P. and M. his wife and P. P., and also the said A. P., D. P. and G. P. by their direction and authority or with their privy consent and approbation, have lately opened and worked the said veins or seams of coal iron-stone and other minerals and raised or dug up or procured large quantities of coal culm and iron-stone and other minerals from the said several copyhold or customary estates to which the said M. P. and P. P. were so admitted as aforesaid, and which they have since sold and disposed of for various large sums of money. And the said several confederates at other times pretend that coal and iron-stone have been from time immemorial raised or dug up by the tenants of copyhold estates holden of the said manor of O. W. without their right to the same being called in question by the lords of the same manor. Whereas your orator expressly charges the contrary thereof to be the truth; and that the said defendants have frequently admitted that no coal or iron-stone had been dug for or procured within the said manor till of very late years. And in particular your orator charges that the said defendant M. P. expressly stated in the presence of the said P. P. at a court held in and for the said manor on the 24th day of March —, that for years after she was born no coal had been got in O —, and that she well recollected the first coal pit being sunk there. And your orator further charges that the said defendant A. P. and his late father or one of them were or was the first persons or person who sunk the first pit for digging coals or iron-stone within the said manor, and he and all the other defendants well knew that no custom exists enabling the copyholders to dig and procure coal iron-stone or other minerals within the said manor, and that all minerals within the said manor belonged exclusively to the lord. And the said several defendants at other times pretend that the coal and iron-stone and other minerals raised and procured by them from the said copyhold estates were of very small value, and that your orator or his steward granted some license or authority to them for that purpose. Whereas your orator charges that the said copyhold estates belonging to the said M. P. and P. P. are worth to be let the sum of 800*l.* and upwards per acre, on account of the veins and seams of coal culm and iron-stone and other minerals lying within the same for the purpose of dig-

ging for and getting such coal culm and iron-stone and other minerals; And that your orator or his steward never gave or granted any license or authority to the said several defendants or any of them, or any other person or persons to open the said veins or seams of coal and iron-stone and other minerals, or to dig for or procure coals iron-stone or other minerals within the said manor, which the said several confederates well know to be the truth; And the said confederates A. P. D., P. and G. P. at times claim or pretend to be entitled to all the coal culm and iron-stone and other minerals found in and upon or under the said several copyhold or customary estates to which the said M. P. and P. P. were so admitted as aforesaid under or by virtue of \*some lease or agreement for a lease made or granted to them by the said E. P. and M. his wife, and P. P. but the nature and particulars of such lease or agreement they respectively refuse to discover; And the said A. P., D. P. and G. P. also refuse to give or render to your orator any account of the coal culm iron-stone and other minerals dug up and procured by them respectively within the said manor or the value thereof or any part thereof, and allege that they or either of them never knew that your orator was entitled to the coal culm and iron-stone and other minerals within the said manor. Whereas your orator charges that if any such lease or agreement was ever made or entered into with them or any of them, the same is absolutely void as against your orator, and that your orator as lord of the said manor of O. W. is well entitled to have an account taken of the quantity of coal culm iron-stone and other minerals raised or dug up by the said several defendants and every of them from the said several copyhold or customary estates and of the quality thereof, and of the several sums of money for which the same and every part thereof have or has been sold or disposed of; And that all the said defendants well knew at the time they first commenced digging for and getting such coal or culm or iron-stone or other minerals as aforesaid, that your orator was well entitled thereto or had some notice thereof given to them. But nevertheless the said several defendants E. P. and M. his wife, P. P., A. P., D. P. and G. P. persist in digging and getting coals and iron-stone and other minerals lying in or under the said several copyhold or customary estates or some part or parts thereof, and in converting the same to their own use and benefit, contrary to the custom of the said manor and the will of your orator. All which actings doings and pretences, &c. [see form VI. p. 5.] and more especially that the said confederates may in manner aforesaid answer and set forth, Whether the said M. P., P. P. and E. W. were not duly admitted tenants to the aforesaid thirty-one copyhold or customary estates or tenements or some and which of them in manner aforesaid at the said court held in and for the said manor of O. W. on the said 12th day of July —, as the co-heiresses at law of the said W. F. their father deceased or how otherwise; And whether the said E. W. did not depart this life in the year —, or at some other time and when; And whether the said M. P. and P. P. did not thereupon claim to be entitled, and were not afterwards and when in particular duly admitted tenants in manner aforesaid to the said one-third part or share then late of the said E. W. de-

Charge as to the value of the land on account of the veins of coal; And that no license was ever granted. Pretence of a lease granted to three of the defendants by the other defendants.

[ \*276 ]

Refusals by defendants to account alleging that they were ignorant of the plaintiff's title to the coal.

Charge that any lease, if granted, is void against the plaintiff, and that he is entitled to an account.

Charge as to notice to the defendants; But that they persist in digging for coals, &c. and convert the same to their own use.

Interrogatories relating to the stating part;

ceased of and in the said thirty-one copyhold customary estates or tenements, or some and which of them, as her sisters and co-heiresses, or how otherwise: And whether there are not situate lying and being in upon or under the said thirty-one copyhold or customary estates, or under several and which of them, or some and what part or parts thereof certain veins or seams of coal and iron-stone and other and what minerals of great value; And whether the absolute property thereof is not now vested in your orator as lord of the said manor of O. W. and if not why not; And whether the said E. P. and M. his wife, and P. P. or some and which of them have not lately and when in particular, and without the license or consent of your orator, opened the said veins or seams \*of coal and iron-stone and other minerals, or authorized or permitted the same or some and which of them, and where situate, to be opened; And whether the said E. P. and M. his wife, and P. P. or some and which of them have not worked dug up or procured and carried away or authorized or permitted to be worked dug up or procured and carried away from off the said several copyhold or customary estates or some and which of them or some and what part or parts thereof, some large and what quantities of coal culm and iron-stone, and other and what minerals; And whether they or some and which of them have not since sold and disposed thereof, or some and what parts thereof for their respective use and benefit for very considerable and what sums of money, or what is become thereof; And whether your orator hath not frequently by himself his steward and agents, made such applications and requests to the said defendants E. P. and M. his wife and P. P. or to some or one and which of them as hereinbefore in that behalf stated and set forth or some other and what applications and requests to that or the like or some and what other purport or effect; And whether the said E. P. and M. his wife, and P. P. or some or one and which of them do not and why absolutely refuse to comply therewith; And whether the said veins or seams of coal and iron-stone and other minerals lying in and under the said several copyhold or customary estates in their tenure or occupation or of their undertenants or some and which of them, were not opened or worked by them the said E. P. and M. his wife, P. P. or some or one and which of them, or by the direction or for the benefit of them or some or one and which of them; And whether the freehold lands belonging to the said M. P. and P. P. in O—— aforesaid or to one and which of them do not lie intermixed with and undistinguished from the aforesaid several copyhold estates so as aforesaid belonging to them, and holden of the said manor of O. W.; And whether the boundaries of the said copyhold estates or some and which of them have not been thrown down or improperly neglected by the said M. P. and P. P. for the purpose of rendering the same undistinguishable from the said freehold lands, and for some and what other purpose; And whether by means of shafts or pits and engines and other machinery sunk and erected by the said several defendants E. P. and M. his wife P. P., A. P., D. P. and G. P. or by some and which of them as well on the freehold parts of the said lands as also on the said copyhold estates or some and what parts

[ \*277 ]

As to the applications to the defendants;

To the charging part.

thereof they the said E. P. and M. his wife, and P. P. and also the said A. P., D. P. and G. P. by their direction and authority or with their privy consent and approbation or some or one and which of them have or hath not lately opened and worked the said veins or seams of coal and iron-stone and other minerals, and raised or dug up and procured some large and what quantities of coal culm and iron-stone and other minerals from the said several copyhold or customary estates or some or one and which of them, or how otherwise; And whether they or some or one and which of them have or hath not since sold and disposed thereof or some and what parts thereof, for various large and what sums of money; And whether the said several defendants E. P. \*and M. his wife, and P. P. and also the said A. P., D. P. and G. P. or some or one and which of them have or hath not frequently expressly stated or admitted as the fact is that no coal or iron-stone or one and which of them had been dug for or procured within the said manor till of very late years, or used words to that or the like or some other and what purport or effect; And whether the said defendant A. P. and his late father or one and which of them were or was not, or who were or was the first persons or person within the knowledge information and belief of the said defendants respectively, who sunk the first pit for digging coals or iron-stone within the said manor, and in what part thereof in particular; And whether the said defendants respectively do not well know and whether it is not the fact that no custom exists enabling the copyholders to dig and procure coal iron-stone or other minerals within the said manor, or any part or parts thereof; And if they or any or either of them shall pretend to allege that any such custom exists, then that they may respectively set forth the particulars thereof, and the origin and grounds upon which they allege the existence of such pretended custom; And whether all the minerals within the said manor do not belong exclusively to the lord, and if not why not; And whether the said defendant M. P. did not expressly state in the presence of the said P. P. and to some and what person or persons at a court holden in and for the said manor on the 24th day of March —, or at some other time and when in particular, that for years after she was born no coal had been got in O—, and that she well recollected the first coal-pit being sunk there, or used words to that or the like or some other and what purport or effect; And whether the said copyhold estates belonging to the said M. P. and P. P. are not worth to be let the sum of 800*l.* and upwards per acre or some other and what sum of money, on account of the said veins and seams of coal and iron-stone and other minerals lying within or under the same for the purpose of digging for and getting such coal culm and iron-stone and other minerals; And whether your orator or his steward did ever and when in particular give or grant any license or authority to the said defendants, or any or either and which of them, or to any other person or persons and whom by name to open the said veins or seams of coal or iron-stone or other minerals, or to dig for or procure coals iron-stone or other minerals within the said manor; And if the said A. P., D. P. and G. P. or any or either of them shall claim or pretend to be entitled to all the coal culm and iron-stone

[ \*278 ]

As to the alleged lease.

[ \*279 ]

For an account of the quantities of coal, &c. procured by the defendants, and for whom; the moneys produced by the sale thereof, and by whom received, and the quantities of coal remaining unsold.

and other minerals found in upon or under the said several copyhold or customary estates to which the said M. P. and P. P. were so admitted as aforesaid, or any part or parts thereof under or by virtue of any lease or agreement for a lease made or granted to them or any or either of them, by the said E. P. and M. his wife, P. P. or any or either of them, then that they may respectively set forth and discover the nature and particulars thereof, together with the date parties' names and short material contents; And that all the said several defendants may in manner aforesaid answer and set forth whether such lease or agreement for a lease is not absolutely void as against your orator, and if not why not; And whether your orator is not well entitled to have an account taken of the quantity of coal \*culm and iron-stone and other minerals raised or dug up by the said several defendants, and every of them, or by their direction, from the said several copyhold or customary estates, and of the quality thereof, and of the several sums of money for which the same and every part thereof have or has been sold or disposed of, and if not why not; And whether all the said defendants or some or one and which of them did not well know at the time they first commenced digging for and getting such coal or culm as aforesaid, that your orator was well entitled thereto, or had not some and what notice thereof given to them respectively, or to some or one and which of them, or when did the said defendants respectively first know understand or believe or have notice given to them respectively that your orator was entitled to such coal or culm and iron-stone and other minerals; And that the said several defendants may respectively set forth a full true and particular account of the several quantities of coal culm and iron-stone and other minerals raised dug up or procured by them respectively, or by any other person or persons by their or any or either of their permission or direction, or for their or any or either of their use and benefit in each and every year from the commencement thereof out of and from the said veins or seams of coal iron-stone and other minerals lying in upon or under the said several copyhold or customary estates belonging to the said M. P. and P. P. and holden by them of the said manor of O. W. and the natures qualities full true and utmost values thereof, and of every part thereof, and when or at what time or times and by whom or by whose direction and from which of the said several copyhold or customary estates or from what part or parts thereof the same several quantities of coal culm and iron-stone and other minerals and every part thereof have or hath been so raised dug up or procured, and how and in what manner the same and every part thereof have or hath been sold applied or disposed of, and when and by whom and to whom and for what sum or sums of money, and for whose use and benefit, and by whom such sum or sums of money have or hath been from time to time received; And whether any and what sum and sums of money now remain due and owing on account thereof, and from whom and why the same still remain due and owing; And whether any and what quantites of such coal and culm and iron-stone and other minerals now remain unsold or undisposed of, and where are the same now lying, or what is become thereof.



And that an account may be taken by and under the direction and Prayer. decree of this honorable court of the several quantities of coal culm and iron-stone and other minerals worked raised or procured by the said defendants E. P. and M. his wife, and P. P. and the said A. P., D. P. and G. P. and every of them, or by any other person or persons by their permission or direction or for their or any or either of their use, out of or from the said several copyhold or customary estates belonging to the said M. P. and P. P. and holden by them of the said manor of O. W., and how and in what maner and for what sum or sums of money the same and every part thereof have or hath been sold applied and disposed of; and that the said defendants may be \*respectively decreed to pay the full value thereof to your orator; and that the said defendants E. P. and M. his wife, P. P., A. P., D. P. and G. P. respectively may be restrained by the injunction of this honorable court from working the said veins or seams of coal iron-stone and other minerals lying in upon or under the said several copyhold estates of the said defendants M. P. and P. P., and from digging getting and carrying away or selling or disposing of the coal culm and iron-stone and other minerals produced therefrom. [And for further relief, see form VIII. p, 5.] May it please, &c. [see forms No. 1, and 5, p. 6.]

[ \*280 ]

*Pray subpoena and injunction  
against E. P. and M. his wife,  
P. P. A. P. D. P. and G. P.*

XCI. *Bill by the tenants of several manors parcel of another manor against the lord and his steward to establish certain ancient customary rents and fines and other customs; the lord alleging that the fines are arbitrary and that an award was made binding upon the plaintiffs.—The bill prays that one or more issues at law may be directed in some indifferent county, that antecedent thereto the defendants may produce all decrees, deeds, &c. relating to the customs, that the plaintiffs may be quieted in the enjoyment of their estates, and for an injunction to restrain the lord of the manor from proceeding in the ejectments commenced against the plaintiffs.*(4)

Humbly complaining show unto your lordship your orators T. A. of, &c. and I. B. of, &c. for and on behalf of themselves and all

(4) Where a man sets up a general exclusive right, and where the persons who controvert it with him are very numerous, and he cannot by one or two actions at law quiet that right, he may in the first instance file a bill in equity, which is called a *bill of peace*, and the court will direct an issue to determine the right, as in disputes between lords of manors and their tenants, and between tenants of one manor and another; but a bill of this description cannot be maintained where a right is disputed between *two persons only*; *Lord Teynham v. Herbert*, 2 Atk. 483. As where a bill was brought by *one tenant* of a manor suggesting a custom for the tenants of the manor of A. (of which he was one) to cut turves in the manor of B. to quiet him, and to have an issue directed as to the right; upon this occasion, the court said, "This bill is im-

All the man-  
ors governed  
by the like  
customs.

[ \*281 ]

Plaintiff sei-  
sed of tenant-  
right estates  
by payment of  
a certain an-  
cient rent, and  
certain fines.

Fines assessed  
and the value  
of the estates  
estimated in  
proportion to  
the ancient  
rent.

Custom for te-  
nants to cut  
underwood,

other the customary tenants of the manors and lordships of, &c. respectively or of any of them, and of such other manors or lordships, if any, as are held under the manor or barony of B. in the county of Cumberland,(5) That all the said manors or lordships are and have been immemorially governed by the same \*or the like customs, both as to the payment of their fines, and in all other respects. And your orators further show that they and the other customary tenants of the said manors and lordships which consist of — acres, now are and for several years last past have been lawfully seised to them and their heirs respectively, according to the ancient and laudable custom of tenant-right time out of mind used and approved of within the said barony, of certain customary freehold estates of inheritance descendible from ancestor to heir(6) of and in several messuages lands tenements and hereditaments within and holden of the said several manors and lordships by payment of a certain ancient and accustomed yearly rent, and by payment of certain fines upon change of every lord by death, and of every tenant by death or alienation, to the lord of the said manors and lordships for the time being as follows, viz. upon the change of every last admitted lord of the said manors or lordships by death, by payment of such fine as the next succeeding lord or his steward or agents have reasonably assessed, not exceeding —*d.* fine, or — times the amount of the rent so paid by each tenant for or in respect of the customary or tenant-right estate so descending or aliened, which are called dropping descent or alienation fines. And your orators further show that as well the said general fines as the dropping descent or alienation fines have time out of mind been assessed and paid according to the ancient yearly rent paid to the lord in respect of the estate or estates for which the same severally happened to become due, without any regard to the real or improved yearly value thereof; and that such estate and estates have been esteemed more or less valuable, and have been sold for a greater or lesser price in proportion as they were high or low rented, and that such of your orators and the other tenants of the said several manors and their ancestors as have been purchasers of customary estates held thereof have always paid greater prices for such estates as have paid a small ancient rent than for such estates in other respects being of equal value as have paid a greater ancient rent, by reason of the said measure and method used and observed in assessing the said fines so due and payable in respect thereof. And your orators further show that by ancient custom and usage time out of mind used and observed within the said

proper and inconsistent with the nature and end of a bill of peace, which is that where *several persons* having the same right are disturbed, on application to the court to prevent expense and multiplicity of suits issues will be directed, and one or two determinations will establish the right of all parties concerned on the foot of one common interest, and the bill is preferred by all the parties interested or a determinate number in the name of themselves and the rest; but in this case one only brings the bill on the general right, and not on the foot of any particular distinct right;" and therefore the bill was dismissed with costs. 1 Madd. Ch. Pr. 172. See also *Conyers v. Lord Abergavenny*, 1 Atk. 284; *Cowper v. Clerk*, 3 P. Wms. 155, 7; and p. 267, n., 6th ed.; *Weale v. West Middlesex Waterworks Company*, 1 Jac. & W. 369.

(5) See 1 Watk. on Copyholds, ed. by Coventry, p. 41.

(6) See 2 Watk. on Copyholds, p. 152, n.

several manors the respective tenants thereof have and always had a right to cut down and dispose of and use all the underwoods growing on their customary lands and estates at their will and pleasure, and also to cut down and make use of any timber growing on their said estates for repairing of their customary messuages and buildings, and for hedge-bote cart-bote plough-bote fire-bote and all other necessary uses about their customary estates, which your orators and the other tenants of the said manors are obliged to keep in good repair, and also have been and are absolutely entitled to their own use and to sell and dispose of as they should think proper, all the trees growing on their hedges and commonly called hedge-row trees, for which they pay a rent called green lew; and also to get lime-stone out of any quarries upon or within their respective customary estates or any waste grounds \*and commons of the said manors and lordships respectively and burn the same, in order to be laid upon and consumed upon their said estates; and also to get stones out of any quarries upon their said estates or upon the said waste grounds or commons of the said manors or lordships respectively for building or repairing their customary messuages barns walls hedges or other buildings and erections upon or to be erected upon the same upon the sites of ancient messuages, and for that purpose to open new quarries of stone within their said estates, or on any of the waste grounds or commons of the said manors and lordships: and also to turn their cattle *levant et couchant* upon their respective estates, upon the wastes or commons belonging to the said manors and lordships, and particularly upon a late large waste or common called I. part whereof is within the said manor of A. and part in the manor of T., to graze thereon in the summer-time, and to erect houses and sheds upon such wastes to reside and live in during such time for the conveniency of milking their cows and making cheese and butter there, such tenants paying to and for the use or the lord of the said barony for and in respect of such privileges — per head yearly for their horned cattle, and — per head yearly for their horses; and also to cut up and carry away turf peat heath furze and brakers or fern on any of the said commons or wastes for fuel and for thatching their customary messuages and buildings, and to plough up their several customary lands as they should think most advantageous, and to demise lease and to farm let their said customary estates for any term not exceeding — years, and to mortgage the same redeemable at the end of any term or number of years not exceeding — years, without any license from the lord of the said barony, and without paying any fine on that account; and also to exchange their customary estates of equal value with each other where the same lie intermixed in common fields or dispersed at a considerable distance for the improvement thereof, without having any license as in the case of alienation from the lord or paying him any fine on that account, so as that the ancient rents and services for the lands so exchanged were preserved. And your orators further show that the said customs and others very beneficial to your orators and the several other tenants of the said manors and owners of estates held thereof, have time out of mind been used and obtained within the said manors respectively. And your orators and their ancestors tenants of the said manors have

also timber for botes,

hedge-row trees; also to get limestone to burn for manure and stones for building;

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to open new quarries;

to turn their cattle upon the wastes to graze, and to erect sheds to live in for the purpose of milking cows and making cheese and butter, paying for every head of cattle;

also to cut turf, peat &c.

to plough up lands;

to demise and mortgage their estates without license;

to exchange their lands lying in the common fields without license, or paying any fine.

The tenants' estates lying near the borders of Scotland, and formerly barren but since brought into cultivation.

The premises of which the plaintiffs are seised,—their title thereto.

[ \*283 ]

Applications by the plaintiffs to be admitted tenants upon payment of their fines.

Refusals by the lord, who assessed excessive fines, and brought several ejectments.

Applications to the lord by the plaintiffs to permit the tenants to enjoy their customs, or to have the same tried.

time out of mind peaceably held and enjoyed their respective customary estates under such usages customs and privileges as aforesaid. And your orators further show that all or most of the estates of the said tenants of the said several manors are lying near the borders of Scotland, and were heretofore barren and but of little benefit to the respective owners thereof, and the same have within a few years last past been at a very considerable expense amounting to nearly as much as the inheritance of such estates were worth, improved and brought into a method of agriculture so as to be in some respects beneficial. And your orators further show that your orator T. A. is a tenant of the said manor of A. and is seised or entitled to him and his heirs according to the customs of the same manor of — cottages and a messuage and tenement within and parcel of the said manor \*of A. subject to the payment of the ancient yearly customary rent of —; and that your said orator became entitled to the said customary and tenant-right premises upon the decease of A. C. his late father and as his eldest son and customary heir, and thereupon your orator became entitled to be admitted thereto, and to hold and enjoy the same peaceably and quietly on payment or tender of —d. fine at the utmost; And that your orator I. B. is a tenant of the said manor of B., and is seised and entitled to him and his heirs according to the custom of the same manor of — messuages and a tenement within and parcel of the said manor of B. subject to the payment of the ancient customary rent of —; and that your said orator became entitled thereto upon the decease of and as eldest son and customary heir to H. B. his late father deceased, and ought to have been admitted thereto, and to have held and enjoyed the same peaceably and quietly on payment of a —d. fine. And your orators further show that they have often applied to the said earl and his steward to admit them tenants to the said estates upon payment of their respective fines so due in respect thereof as aforesaid, which they have several times offered and hereby offer to pay to him on their being severally admitted thereto according to the custom of the said manors whereof the same were respectively holden; but the said earl absolutely refused to comply therewith, and instead thereof at the instigation and by the persuasion of I. N. his steward has assessed very excessive and extravagant fines upon your orators in respect of the said estates, and in order to compel your orators to pay the same has brought several ejectments against your orators for non-payment of the said fines, and also brought or threatens to bring actions at law against your orators. And your orators further show that as such multiplicity of suits can tend only to the destruction and ruin of your orators and the rest of the tenants of the said manors and to the perpetual disquietude and disturbance of the peace as well of the tenants as of the lord of the said barony, and can be of no real good or benefit to the said earl, your orators have therefore several times applied to the said earl and requested him either to suffer your orators and the other tenants of the said manors peaceably and quietly to enjoy their said several customs, or that the same might be tried in a fair and candid manner in one action by proper issues to be directed by this honorable court, which

would effectually and perpetually settle the said several customs, and establish peace in the said barony for all succeeding generations in regard not only to your orators but the other tenants of the said barony. And your orators and the other tenants of the said barony are ready to submit thereto and to be bound by such determination; with which fair and reasonable requests your orators were in hopes the said earl would have complied. BUT NOW SO IT IS may it please your lordship that the said earl in conjunction with the said I. N. his steward, in order to oppress your orators and deprive them of their several customs, refuses to comply therewith, alleging that arbitrary fines are due to him within the said several manors upon the death of each customary tenant and upon all alienations, and that he can assess what fines he pleases so as the same do not exceed two years' full improved value for the estate for which such fines are assessed, and that the two years' value is \*not to be measured or computed according to the rent paid by the tenants and farmers thereof, but according to such value as he his own stewards bailiffs officers or agents shall from time to time adjudge the same, exclusive of any person attending on behalf of the tenants; and that so it appears by several deeds papers and rentals in the custody of the said earl, and also that such arbitrary fines as aforesaid have always been assessed and paid within the said manor. Whereas your orators expressly charge the contrary thereof to be the truth, and that the said fines are not arbitrary but limited, so as the same do not exceed a —d. fine, or — times the value of the ancient rent as aforesaid, which your orators insist is the very highest fine that can with any degree or color of justice be taken, and that such fine even exceeds the ancient method or custom of assessing fines from your orators. And your orators expressly charge that the said several manors formerly belonged to the family of the D.'s and were forfeited for high treason in the reign of —, and then came to the crown and continued in the crown for several years, and were afterwards granted by the crown as a bounty and without any real consideration to an ancestor of the said earl, or to some person or persons under whom he claims. And your orators also charge that while the same continued in the family of the D.'s, and while in the hands of the crown, sometimes a —d. sometimes a —d. and sometimes a —d. fine, and seldom or never more on deaths or alienations was taken, and so it appears by several ancient deeds papers and rentals, copies whereof were lately in the custody of the said earl, and the same fines were also accepted by the said earl's ancestor's for several years. And that the great grandfather's father great grandfather and grandfather of the present earl first attempted to break in upon the said customs, and particularly assessed considerably higher fines than ever had been done, and even by degrees carried such fines to a —d. —d. —d. —d. —d. —d. —d. and —d. and in some very few instances to —d. —d. and —d. fine, yet they always constantly and invariably assessed the same according to the rate proportion and income of the old rate, and there are no ancient instances of assessing fines otherwise. And there was no attempt or evidence of any attempt till within the memory of man of assessing such fines ac-

Refusals by the lord, alleging that the fines are arbitrary, but so as they do not exceed two years' improved value.

[ \*284 ]

Charge the contrary.

Charge as to the lord's title.

That certain fines were payable when the manors were in the hands of former lords, and while in the hands of the crown.

Charge as to the first innovators upon the customs.

Encroach-  
ments on the  
customs car-  
ried on secret-  
ly.

[ \*285 ]

Charge that  
the arbitrary  
fines were ne-  
ver paid, or if  
paid, part was  
returned by  
private agree-  
ment.

Charge as to  
the exorbitant  
fines taken by  
the lord.

That numbers  
of the tenants  
have been  
ruined.

cording to the improved value of said estates. And it particularly appears by several deeds actually signed by the ancestors of the present earl that according to the custom of the barony of B. a —d. or —d. fine, according to the old rent and no more, upon a descent, and a —d. or at most a —d. fine according to the like custom of the said barony upon alienations, was and ought to be taken. And your orators expressly charge that the same would appear by several ancient deeds papers and rentals now or lately in the custody of the said earl; and though the design of breaking the said customs has been formed and proceedings and encroachments thereon have been gradually making for several years, yet the same was carried on with great secrecy by first assessing a —d. fine, then proceeding to a —d. fine, and so on, and never openly avowed till the lord and his steward had in a few instances raised the fine according to an extravagant number of years \*old rent to be equal to one year's improved rent, and by which means imagined that all traces of the said ancient customs were utterly effaced and incapable of being proved. And your orators further charge that though it should appear that more may have been assessed, yet that the same fines were never submitted to or paid, or if paid the same were by some private agreement between the lord and tenant, and the overplus returned to the tenant; or if there are any instances where such fines were ever paid without such private agreement, they are but very few and in cases where the tenants were not able to contend with the lord and rather chose to pay a small sum more than they were obliged to pay than enter into a suit about the same, and that the practice was not so anciently, but is an innovation of the successive lords of the said manors and their stewards as aforesaid. And your orators charge as evidence thereof that there is no instance of more than a —d. fine having been paid within any of the said manors till within — years or thereabouts, and that within that time and within — years last past and less, there are great numbers of instances of fines paid not exceeding a —d. fine. And your orators further charge that the said earl and his stewards under such pretences as aforesaid have lately in great numbers of instances where the said tenants have alienated their customary estates, assessed and taken near — years' improved value of such estates for a fine without any deduction or allowance for land-tax or other outgoings, and without having or paying any regard to the great sums of money laid out by the said tenants in improving their said estates; and that till the time of the said I. M. the said earl's present steward, no such excessive fines as are now demanded were ever assessed or paid, and before his time no more than — years' value was ever taken in any instance. And the said I. N. hath made merit of such his oppressions by frequently declaring that he hath advanced the said fines —l. a year or some such large sum higher than they ever were advanced before. And your orators charge that great numbers of the tenants who have but small estates are by such means utterly ruined, in regard their estates having been so many centuries valuable are now almost reduced to a footing with and of little more value than tenan-

cies at will only. And your orators further charge that if the said earl should be entitled to assess arbitrary fines in respect of the said estates which your orators do not by any means admit, yet your orators even in that case humbly submit to the judgment of this honorable court whether according to the rules at law more than — years' value of the said estate ought to be paid for a fine, and humbly insist that the true measure of such value is in the rent paid by the farmer and tenant thereof, or if the same is unlet that your orators ought to have some person present at the time of the valuation thereof by the said earl and his steward as a check upon them, and that all taxes charged upon the estates and other outgoings ought to be allowed and deducted out of such fines in the computation thereof. And your orators further charge that some scheme or design was several years ago entered into and laid before and has been from time to time executed by the said respective lords of the said manors in order to defeat and break through the \*customs of the several manors, by persuading some of the tenants to take receipts for fines exceeding a —d. fine, which were in fact only paid after or under that rate or measure, under pretence that the same should not in any shape affect them as they paid no more than was really due from them, and by prevailing on others who were either bailiffs under the said lords or their immediate servants or dependents or otherwise under their influence, and by threatening others who are timorous with suits, and by prosecuting the tenants severally and at several times to pay such fines as were assessed upon them; or they were induced to agree thereto by promises of great abatement, or of having part of the money returned, so as to reduce the said fines according to the said ancient measure and by promises of future favors, or by such or the like inducements; and that no bill was ever brought by any of the said lords against the tenants in general touching the said custom which exists upon the death of a lord, but it is admitted and in fact was never disputed that a —d. fine was the extent of what the lord could take in such case, and the same was never attempted to be changed or varied by the lord, in regard it would have become the general and immediate concern of the whole barony; but in cases of descents and alienations, as such did only immediately concern the respective persons purchasing or becoming entitled by descent, an infringement and alteration of the customs in that respect became easy and practicable. And your orators also charge that many other methods have been lately contrived to break the said customs, and in particular that in cases of alienation of any customary estates to any person not before a tenant of any other customary estate within the said barony, the said lord and his steward took advantage of the ignorance of such purchaser of the customs of the said barony, and therefore exacted and took from him over and above the alienation fine assessed, a further sum of money sometimes more or sometimes less but generally —, which the steward called an income fine, which your orators insist is a mere innovation and totally without foundation in custom and an absolute imposition. And your orators also charge that they have not only taken the pretended income fine, but made and now do make use

That if the lord is entitled to arbitrary fines, the same ought not to exceed — years' value according to the rent paid by the tenant.

That all outgoings upon the estate ought to be allowed.

[ \*286 ]

Charge as to various schemes formed for breaking through the customs.

That the fine payable upon the death of a lord was never disputed and why.

Charge that in cases of alienations to strangers the steward has taken an income fine, which is an innovation and imposition.

As to methods used in order to keep the tenants ignorant of the customs by retaining all deeds, &c.

That the steward has usually prepared all deeds of alienation;

[ \*287 ]

and always retained the old deeds.

Pretence that plaintiffs have no right to cut underwood or timber without license;

Nor to get stones nor open quarries, nor to cut turf;

Nor to turn their cattle upon the wastes, nor to demise or mortgage or exchange without license and payment of a fine.

Charge the contrary.

thereof in aid of their attempts to break the fine certain by having repeatedly added such pretended income fine to the fine certain for several years past, and that by adding them together and not distinguishing them in their receipts, they have greatly confounded and perplexed the customary payments in several instances. And your orators also charge that divers methods were taken and pursued from time to time by the respective lords and their stewards in order to keep the tenants of the said manors ignorant of and unacquainted with their respective rights and customs by getting into their custody and retaining all deeds, papers and rentals which in any respect tend to explain or show the same. And in particular your orators charge that within the said several manors it is and for several years hath been usual and common for the lord's steward thereof or his agent who is generally an attorney at law as the said I. N. is, to prepare and draw all deeds of alienation to the tenants or from the tenants to any other person or persons without the interposition of any \*other attorney or agent or friend of the vendors or purchasers, though he hath not nor ought to have any right so to do in regard that the said practice may be and actually has been a great means of and has given him great opportunities of imposing upon the tenants and subverting their customs which hath actually been done or attempted, for that such of the tenants or most of them as have so aliened their lands have been from time to time prevailed upon by the respective stewards or agents to bring all their old deeds, &c. to them under a pretence of looking into the title, and which they have always kept and retained and only returned the new purchase deed or deeds, alleging that the same was sufficient to show the title of such estates. And the said earl and his steward designing to break not only the customs relating to the measure of the said fines, but all other the ancient usages and customs of the said manors, pretend and give out that your orators and the other customary tenants within the same have no right to cut down and dispose of any of the underwoods growing on their customary lands or any other wood or timber growing on their said estates, for the repair of their houses and other ancient buildings on their said customary estates and other necessary botes, without license from the said earl or his steward; nor without such license to get any lime-stones or any stones for repairing or rebuilding upon their said estates, or to open any new quarries upon the waste of their respective manors for that purpose; nor to cut up or carry away any turf, &c. growing or being on any of the said wastes or commons for fuel or for thatch for their said customary messuages; nor to turn their cattle upon the wastes or commons of the said manors in the summer to graze and depasture there, or to erect houses there to reside in during such time for the purposes aforesaid; nor to demise, &c. any of the said customary estates for any term of years, or exchange the same or any part thereof without such license and without payment of a fine by the person so letting and exchanging to the lord, and that it is discretionary in the lord or his steward whether he will or will not grant such license in any of the said cases. Whereas your orators charge the contrary thereof to be the truth, and doubt not to be able to prove to the satisfaction of this honorable



court that by ancient custom time out of mind used and approved within the said several manors your orators and all other customary tenants within the same have not only had and taken from off any parts of their said several estates wood for house-bote, &c. and all other necessary convenience, but have also immemorially had and taken their hedge-rows and trees growing on the hedges of their customary estates to fell, give away or dispose of as they should think proper; and that they have also till the time of the said I. N. the present steward not only had lime and other stones as aforesaid, but they have always had a right and have always cut up and carried away turf, &c. within the wastes and commons for the purposes aforesaid, and also a right from time to time to turn their cattle upon the wastes and commons to graze and to erect houses and sheds to live in as aforesaid. And particularly your orators charge that there is a large tract of waste or common ground called S. within the said barony of B. which your orators and the several \*other tenants of the several other manors within the said barony, and in particular of, &c. and the other adjoining manors and their ancestors from time immemorial used to enjoy in the summer season as aforesaid till within these — years when the lord of the said manors without the consent of your orators and the rest of the tenants took upon himself to exclude them from such their enjoyment thereof, and to let the same to such persons as he thought fit at a rack rent. And your orators also charge that they have a right and ought to be at liberty to lease and mortgage their several customary estates for such terms as aforesaid, and also to exchange the same without any fine, or having any license from the said earl and his steward, and that they have enjoyed all such liberties and privileges without any interruption till very lately. And the said earl and his steward, at other times give out and pretend that though it should appear that your orators and the other tenants were anciently entitled to such customs as aforesaid, yet that a dispute having arisen between the late earl, father of the present earl, and some few of his tenants about — years ago, the same was referred to arbitration, and an award then made, whereby the said fines were then settled and allowed to be arbitrary and at the will of the lord; and that if they were originally such customs as are insisted on by your orators, the same are destroyed and defeated by such award as the same as it is pretended has ever since been submitted to by the said tenants, and that therefore they ought to be bound thereby. Whereas your orators charge that no such award was ever made, or if there was any such the same was brought about by the said earl's father or his steward, which steward was a person who frequently endeavored to break through and alter the customs by fair representations and by the great influence which he had over the parties to whom he made the same, and that no written proof on behalf of the tenants as to the matters so referred was laid before such arbitrators but the same was concealed by the then lord, and that therefore the same is invalid and of no effect; or if otherwise, yet that none of the tenants ought to be bound thereby, except such as were parties to such submission, if any such there were, and that there were not more than

Charge that the tenants of [ \*288 ] certain manors used to enjoy a large tract of waste until the lord excluded them and let the same.

Pretence as to an award being made by which the fines were allowed to be arbitrary, and the customs thereby destroyed.

Charge that no award was made, or if made it was brought about by the late earl steward through great influence.

That no proof was laid before the arbitrators.

That none of the tenants

ought to be bound except the parties to the submission, and that they were influenced by threats.

That the steward admitted on his death-bed that he had broken in upon the ancient customs. That the award was never acquiesced in.

[ \*289 ]

The tenants unable to contend with the lord.

Pretence that the plaintiffs' estates are not of the nature of tenant-right, but tenancies by copy at the will of the lord and that defendants have several decrees showing the same.

Charge the contrary.

That defendants have all the ancient deeds, &c.

which they refuse to produce.

or to permit plaintiffs to inspect the same, pretending that a great part

the number of — if any who signed or agreed to such submission, whereas the whole number of the tenants exceeded six hundred; and even those who signed were influenced by threats to sign the same, and all or the greater part of them were dependent upon the said lord or his steward, which said steward was so conscious that he had drawn in and imposed upon them that he frequently declared and admitted, both on his death-bed and before, that what he had done in that respect, and also in other matters whereby he had broke in upon the said ancient customs, gave him so much uneasiness of mind that he could not die in peace without declaring the same or to that effect. And your orators charge that such award was never acquiesced in or submitted to, and that some of the said tenants before the said award and since that time, through the threats of the said lord and his steward, may have been induced to pay greater fines than they were bound or obliged to; yet the same was never from consciousness that such fines were really due, but they always declared it was through fear and to avoid the expense of suits, and their inability to contend at law with a person of the great influence and fortune of the said respective lords of the said manors. And the said earl and his steward at other times allege that the several estates holden of the said manors are not of the nature of tenant-right or customary tenure, but are merely tenancies by copy at the will of the said lord, and that they have several decrees or copies of decrees which will clearly show the same. Whereas your orators expressly charge the contrary thereof to be the truth: and that if there be any such decrees the same were obtained partially and by collusion, and are not warranted or supported by or grounded upon any evidence whatsoever, and are therefore not warranted by law; and that the said earl and his ancestors are and were so sensible thereof, that they never have insisted thereon, but frequently both before and since have admitted that the said estates were tenant-right estates, and that it so appears by several deeds, &c. in the custody of the said earl and his steward or agents, or of some person or persons with his or their knowledge and consent. And your orators charge that the said earl and his steward on the occasion of the said pretended submission and award, prevailed on the arbitrators and manager to deliver up all such deeds, &c. as were produced or intended to be produced on that occasion, and still have the same, and having by the several means aforesaid, and by other means got into their custody or power all the ancient deeds, &c. belonging to the tenants of the said manors, and also all the court books relating to the payment of fines, and by which all other the said customs would plainly appear, they refuse not only to produce the same on any trial at law, and without which no fair trial can be had, nor the said customs, or the peace of the lord and tenants settled and established, which your orators and the rest of the tenants are very desirous of, but the said earl and his steward also refuse to suffer your orators to peruse and inspect the same, and deprive your orators and the other tenants of necessary evidence to support the said customs under a pretence that a great part of such ancient deeds, &c. were several years ago burnt or destroyed. Whereas your orators charge that if

any of them were burnt or destroyed the said earl and his agents have preserved copies thereof. And the said earl also alleges that there is or are some other person or persons who under some deeds or settlements or limitations therein is or are or will be entitled to the said manors after him, or to some right title or interest in the said manors or some part thereof; and that such person or persons will not be bound by any decree verdict or other determination to be had or made between them and your orators and the rest of the said tenants, but he refuses to give your orators any further satisfaction therein or to discover such person or persons, which your orators are advised is requisite to be done in order that they may be made parties, and thereby the customs of the said manors completely settled and established. And your orator also charge that no trial can be had according to the course of the common law touching the said several customs out of the county of Cumberland, or if in any other county, yet not without a jury of that county, and that such trial would not nor could be fair or impartial, \*(in regard the said earl is entitled to and would try the same with a special jury) not only by reason of the said earl's great interest in the said county, but also in regard that all or most of all the gentlemen in the said county capable of serving on special juries are lords of manors, governed by the like general customs. To THE END therefore that, &c. [*vide antea*, p. 5 and 9; *interrogating to the stating and charging parts.*]

And that the said ancient custom of paying fines, and all other the said customs before mentioned, may be settled and ascertained, and for that purpose that one or more issue or issues at law may be directed by this honorable court in some indifferent and disinterested county to try and ascertain the same; and that in order to enable your orators and the rest of the said tenants to proceed in such trial, the said earl and his steward may antecedent thereto produce all such decrees deeds, &c. in any way relating to the said several customs in their or either of their custody or power, or in the custody possession or power of any other person whomsoever for their or either of their use, or in trust for them, or with their knowledge privity consent or procurement for your orators' inspection and perusal; and that the said several customs may be established by the decree of this honorable court; and that the said earl and his steward may be decreed to permit your orators T. A. and I. B. peaceably and quietly to enjoy their said several estates upon payment of what shall appear to be due to the said earl in respect of their said several fines which they hereby severally offer to pay; and that in the mean time and until the said customs shall be established an injunction may be awarded by this honorable court against the said earl to stay further proceedings at law against your orators upon the said ejectments, and to prevent the said earl from recovering possession of your orators' said estates. [*And for further relief, see form VIII. p. 5.*] May it please, &c. [*see forms No. 1, 3 and 4, p. 6.*]

have been burnt.  
Charge that defendants have preserved copies.

Pretence as to other persons entitled under settlements whose names defendants refuse to discover.

Special circumstances charged with regard to a trial at law.

[ \*290 ]

T. C. R. W. and C. Y.

\*16. BILLS BY NEXT OF KIN FOR ACCOUNT.

XCVI. *Bill by intestate's brother and sisters against his widow and administratrix for their distributive share of his estate; and for an injunction against her and the Bank of England*(1) *to restrain the sale of a sum of stock standing in deceased's name, under a suggestion of her intention to leave the country.*

To, &c.

Statement of  
the property  
to which the  
intestate was  
entitled.

His death.

His next of kin.

Humbly complaining show unto your lordship your orator and oratrixes S. M. of, &c. C. M. of, &c. widow, and A. L. of, &c. widow, That A. M. late of, &c. gentlemen, was in his life-time and at the time of his death possessed of and well entitled to a considerable personal estate consisting of moneys in the funds, debts due to him, household goods plate linen china wearing apparel and divers other effects of a considerable amount and value, and particularly was possessed of a sum of £—— £3 per cent. annuities standing in his name at his death in the books of the Governor and Company of the Bank of England. And your orator and oratrixes further show that the said A. M. in and about the month of —— departed this life intestate and without issue leaving F. M. his wife, one of the defendants hereinafter named, and your orator his brother and your oratrixes his sisters and only next of kin him surviving. And your orator and oratrixes further show that since the death of the said

(1) By the 39th & 40th Geo. 3, c. 36, courts of equity are authorized to order the Bank, the East India Company, or the South Sea Company to transfer stock or to pay dividends to parties in a suit, or to issue an injunction to restrain them from suffering any transfer of stock or payment of dividends, without their being made parties to the suit; this act however not being imperative, a plaintiff is not precluded from making those companies parties if advisable; *Temple v. The Bank of England*, 6 Ves. 772, 2d ed., and note (65), *ibid.* By the proviso in the 2d sect. of that act it is declared, that nothing therein contained should extend to any case where any further discovery is wanted than what is therein before expressly mentioned (*viz. as to the amount of stock or dividends, in whose names the stock is standing, and when transferred; and by whom*), nor to any case where the said companies claim any interest in or lien upon the said fund, but that in such cases it should be necessary to make them parties as if that act had not been made; and that if any special matter should arise which in the opinion of the company should affect their interests, or which might be objected against suffering such transfer of stock or payment of dividends, it should be lawful for them to state such matter to the court by motion or petition in such suit, and that execution of process to compel such transfer or payment should be suspended until final order should be made thereon.

In *Edridge or Eldridge v. Edridge*, 3 Madd. R. 386, Sir John Leach, V. C., observed, that whenever the bank were unnecessarily made parties, he should dismiss the bill as to them with costs, to be personally paid by the plaintiffs, the statute being otherwise rendered useless.

Where the bank are necessarily made parties for the security of a legacy, their costs must be paid out of the capital of the legacy; *Hammond v. Neame*, 1 Swanst. 38.

Where the bank having notice that a bill had been filed, refused to permit a transfer of stock though no injunction had been issued, the Vice Chancellor made an order that they should permit the transfer at any time after a certain day named, unless in the meantime the plaintiff obtained an injunction; *Ross v. Shearer*, 6 Madd. 1.

\*intestate the said F. M. his wife hath obtained letters of administration of the goods chattels rights and credits of the said intestate to be granted to her by and out of the proper Ecclesiastical Court, and hath by virtue thereof possessed herself of the personal estate and effects of the said intestate to a large amount and value and much more than sufficient to pay and satisfy his just debts and funeral expenses, exclusively of the said sum of £—— stock. And your orator and oratrixes further show that being entitled as the brother and sisters of the said intestate to a distributive share of his personal estate, your orator and oratrixes have frequently by themselves and their agents applied to the said F. M. and requested her to come to a full and true account with your orator and oratrixes for the personal estate and effects of the said intestate, and to pay them respectively one-third part each of one moiety of the clear residue thereof, with which just and reasonable requests your orator and oratrixes hoped the said F. M. would have complied. BUT NOW SO IT IS, &c. [see form IV. p. 5.] And the said defendant pretends that the personal estate and effects of the said A. M. were small and inconsiderable and not more than sufficient to pay and satisfy his debts and funeral expenses and that she hath applied all such personal estate and effects in a due course of administration. Whereas your orator and oratrixes charge the contrary thereof to be the truth, and so it would appear if the said defendants would set forth as they ought to do, a full and true account of all and every the personal estate and effects of the said intestate which have been possessed or received by the said defendant or by her order or to her use, and of her application thereof. And your orator and oratrixes further charge that the said F. M. hath declared to several persons that she means to obtain a transfer of the said sum of £—— bank £3 per cent. annuities, and to sell and dispose of the same and to withdraw herself to America with the produce thereof. And the said defendants the Governor and Company of the Bank of England intend to permit her to make such transfer. All which actings, &c. [see form VI. p. 5, *interrogating to the stating and charging parts.*]

Letters of administration granted to his widow.

Applications to the defendant the widow.

Pretence that personal estate was insufficient, and has been wholly applied.

Charge the contrary.

Charge that defendant F. M. intends to sell out the stock and leave the country.

And that the said defendants may answer the premises. And that an account may be taken by and under the direction of this honorable court, of the personal estate and effects of the said intestate A. M. possessed by or come to the hands of the said defendant F. M. his widow and administratrix, or to the hands of any other person or persons by her order or for her use; and also an account of the said intestate's debts and funeral expenses, and that the said intestate's personal estate may be applied in a due course of administration; and that the clear residue thereof may be ascertained; and that your orator and oratrixes respectively may be paid one-third part each of one moiety of such clear residue; And that in the mean time the said defendant F. M. may be restrained by the injunction of this honorable court from selling or disposing of or transferring the said sum of £—— £3 per cent. bank annuities; and that the said Governor and Company of the Bank of England may be restrained from permitting such sale or transfer. [And

Prayer.

*for further relief, see form VIII. p. 5.] May it please, &c. [see forms No. 1 and 4, p. 6.]*

J. L.

*Pray subpoena and injunction against  
F. M. and the Governor and Com-  
pany of the Bank of England.*

XCVII. *Bill by one of deceased's children against his brother (to whom letters of administration had been granted) for an account of intestate's estate and payment of plaintiff's share; plaintiff disputing the application by the administrator of his share towards his maintenance and education during his minority, and especially charging that under the will of an aunt, defendants were bound to maintain him.*

Statement of  
the property  
to which the  
intestate was  
entitled.

Death of in-  
testate, leav-  
ing six child-  
ren, his only  
next of kin.

Grant of let-  
ters of admin-  
istration to  
his son W. P.

Plaintiff's ti-  
tle.

Applications.

Humbly complaining sheweth unto your honors your orator L. P. of, &c. That W. P. heretofore of, &c. your orator's late father deceased was in his life-time and at the time of his death possessed of interested in and well entitled unto a considerable personal estate, consisting of household goods plate linen china and wearing apparel stock on his farm stacks of hay and corn and divers articles implements and utensils of husbandry ready money moneys out at interest upon bonds mortgages and other securities, and divers other goods and effects to a large amount and value and much more than sufficient to satisfy and pay all his just debts and funeral expenses; and being so possessed interested and entitled as aforesaid, he the said W. P. did in or about — depart this life intestate and a widower, leaving T. P. W. P. E. P. M. P. and S. P. the defendants hereinafter named and your orator his six children and only next of kin, him surviving. And your orator further sheweth that some time after the death of said intestate, the said W. P. his son obtained letters of administration of his goods and chattels rights and credits to be granted to him by and out of the proper Ecclesiastical Court, and did by virtue thereof possess himself of the personal estate and effects which were of the said intestate at the time of his death to a large amount in value, and more than sufficient to satisfy and pay all his just debts and funeral expenses with a large surplus or residue, which residue became distributable in equal shares and proportions between and amongst your orator and the said other children of the said intestate according to the statute made respecting the distribution of intestate's personal estate, and your orator as one of such children, became entitled to one-sixth part or share of the said intestate's personal estate and effects. And your orator further sheweth that being so entitled as aforesaid your orator hath frequently by himself and his agents applied to his said brother W. P. and requested him to come to an account with your orator for the personal estate and effects of their said father deceased, and to pay to your orator his sixth part or share of the clear residue thereof.

\*And your orator hoped that the said W. P. would have complied with such request as in justice and equity he ought. BUT NOW SO IT IS, &c. [see form IV. p. 5.] And the said defendant W. P. pretends that the personal estate and effects of the said W. P. deceased were very small and inconsiderable and not more than sufficient to pay and satisfy his debts and funeral expenses. Whereas your orator charges the contrary thereof to be the truth, and that the said intestate's personal estate and effects were more than sufficient to satisfy and pay all his funeral expenses and just debts with a large overplus, and which the said defendant W. P. will at times admit, but then he pretends that your orator having lived with him for many years after the death of the said intestate, he the said defendant hath expended considerable sums of money on the maintenance and education of your orator, and which he insists he ought to be allowed to set off against your orator's said claim, and to retain out of your orator's said distributive share of the said intestate's personal estate. Whereas your orator charges that by reason of the will hereinafter mentioned of his late aunt M. P., the said defendant W. P. is not entitled to have any sum or sums expended on the maintenance and education of your orator allowed to him out of your orator's said distributive share of the said intestate's personal estate. And your orator further charges that M. P. late of, &c. spinster, deceased, by her last will and testament in writing bearing date, &c. (amongst other things) gave and bequeathed, &c. [*all her effects to the said W. P. and S. P. to be equally divided between them and her other nephews and nieces, defendants, and they were to maintain plaintiff until twenty-one, or otherwise to forfeit their shares.*] And your orator further charges that soon after making and publishing her said will the said testatrix departed this life possessed of a considerable personal estate, and particularly of such goods and effects as in her will mentioned, and leaving your orator and the said defendants her nephews and nieces her surviving; and the said defendant S. P. hath duly proved the said will in the proper Ecclesiastical Court, and hath by virtue thereof possessed herself of the said testatrix's personal estate and effects, and together with the other defendants hath taken possession of the several goods and effects so bequeathed to them by the said will, and have retained and applied the same to their own use amongst themselves as hereinbefore is stated, and that your orator is advised and hereby insists that by reason of the said condition contained in the said will the said W. P. ought not to be allowed any charge against your orator for his maintenance and education, inasmuch as the said W. P. hath already received a full satisfaction for the same in manner aforesaid, and which he will at times admit; but then the said defendant W. P. pretends and sets up some other claims against your orator, and refuses to discover the particulars thereof; and the said defendants T. P., &c. severally refuse to join with your orator in this suit, under a pretence that they or some of them have been fully paid and satisfied their shares of the said intestate's estate and effects, but how and in what manner they have been paid and satisfied the same, they severally refuse to discover.

Pretence that the personal estate was insufficient.

Charge the contrary.

Pretence of moneys expended by W. P. in plaintiff's education, and of defendants right to set off the same.

Charge that he is not entitled to be allowed any sums for maintenance, for that under the will of plaintiff's aunt, he and the other defendants are bound to maintain plaintiff.

Charge that testatrix died possessed of a large personal estate.

That defendant S. P. proved her will, and that she and the other defendants possessed themselves of and divided all the personal estate.

That W. P. ought not to be allowed any charge for plaintiff's maintenance.

Pretence of other claims by him.

That the other

defendants re-  
fuse to join in  
the suit.

Prayer.

\*All which actings, &c. [see form VI. p. 5, interrogating to the stat-  
ing and charging parts.]

And that an account may be taken under the direction of this honorable court of the personal estate and effects of the said intestate W. P. the father, possessed by or come to the hands of the said defendant W. P. or any other person or persons by his order or for his use; and that an account may be also taken of the debts and funeral expenses of the said intestate W. P.; and that the personal estate of the said intestate may be applied in a due course of administration; and that the clear residue thereof may be ascertained, and that one-sixth part or share of such clear residue may be paid by the said defendant W. P. to your orator. [And for further relief, see form VIII. p. 5.] May it please, &c. [see form No. 1, p. 6.]

XCVIII. *Bill by intestate's eldest son and heir at law, and his other children (infants) against his widow and her second husband, for an account of intestate's real and personal estate—for the appointment of a guardian and allowance of maintenance; for a receiver as to the rents of the real estate and to have the title-deeds brought into court; and for an injunction against the administratrix and her husband and the Bank of England, (2) to restrain the sale of certain sums of stock standing in deceased's name.*

That the in-  
testate was  
seised of free-  
hold houses,  
&c. and pos-  
sessed of large  
personal es-  
tate consisting  
of moneys in  
the funds, &c.

His death  
leaving a wi-  
dow and  
children.

Letters of ad-  
ministration  
granted to the

[\*296]

widow, who  
possessed her-

Humbly complaining show unto your lordship your orators and oratrix R. T. T. T. G. T. and C. T. all infants under the age of twenty-one years, by J. R. of, &c. their next friend, that R. T. late of, &c. deceased, was at his death seised or well entitled in fee-simple of or to a public-house and ten messuages or tenements situate in G. aforesaid, and also of or to certain lands and premises situate at F. and of or to divers other real estates, and was also at the time of his death possessed of and well entitled to a considerable personal estate, consisting of a sum of £—— 5*l.* per cent. bank annuities and a sum of £—— 3*l.* per cent. consolidated bank annuities standing in his name in the books of the Governor and Company of the Bank of England and of debts due to him, household furniture stock in trade and various other particulars to a considerable amount and value. And your orators and oratrix further show that the said R. T. in or about —— last departed this life intestate leaving J. T. now C. his widow and your orator R. T. his eldest son and heir-at-law, and your other orators and oratrix his only other children and next of kin him surviving. And your orators and oratrix further show that upon the death of the said intestate his said widow obtained letters of administration of the goods chattels rights and credits of the said intestate to be duly \*granted to her, and by virtue thereof possessed the personal estate and effects of the said intestate to an amount greatly more than sufficient to pay and satisfy

(2) See note (1), antea, p. 291.



his funeral expenses and just debts and her residuary share in the said property; and also entered into possession of the real estate of the said intestate or into the receipt of the rents and profits thereof, and got into her custody or power the title-deeds evidences and writings belonging thereto. And your orators and oratrix further show that the said widow and administratrix of the said intestate hath lately intermarried with and is now the wife of D. C. of, &c. and the said D. C. hath since possessed himself of the personal estate and effects of the said intestate to a great amount and hath also entered into the possession or receipt of the rents and profits of the said real estates of the said intestate and hath in his custody or power the title-deeds and writings relating thereto. And your orators and oratrix further show that your orators and oratrix hath by themselves and their agents made frequent applications to the said defendants to come to an account with your orators and oratrix for the personal estate and effects of the said intestate received by them respectively; and your orator R. T. hath in like manner applied to them to come to an account for the rents and profits of the real estates of the said intestate, with which just and reasonable requests your orators and oratrix hoped that the said D. C. and J. his wife would have complied. BUT NOW SO IT IS may it please your lordship that the said D. C. and J. his wife combining and confederating to and with the Governor and Company of the Bank of England and to and with divers, &c. [see form IV. p. 5,] they absolutely refuse so to do, pretending that the personal estate and effects of the said intestate R. T. were small and inconsiderable and not more than sufficient to pay and satisfy his funeral expenses and just debts, and that the whole of such personal estate has been applied in a due course of administration. Whereas your orators and oratrix charge the contrary thereof to be the truth, and so it would appear if the said defendants would set forth as they ought to do a full and true account of all and every the personal estate and effects of the said intestate and of their application thereof. And your orators and oratrix further charge that the said defendants ought also to set forth a full and true account of the rents and profits of the said intestate's real estates which have been possessed or received by them or either of them or by their or either of their order or to their or either of their use. And your orators and oratrix further charge that some proper person or persons ought to be appointed by this honorable court as the guardian and guardians of your orators and oratrix with suitable allowance for their maintenance and education, and that some proper person ought also to be appointed to receive the rents and profits of the real estates of the said intestate, and that the title-deeds evidences and writings relating thereto ought to be brought into this honorable court for the benefit of your orator R. T. And your orators and oratrix further charge that the said \*D. C. and J. his wife threaten and intend to sell and transfer the aforesaid sums of £—— 5*l.* per cent. bank annuities and £—— 3*l.* per cent. consolidated bank annuities, and to apply the produce thereof to their own use. And the said Governor and Company of the Bank of England mean to permit the said defendants to make

self of the personal estates and entered upon the real estate. Her second marriage.

Applications to the defendants.

Pretence that personal estate was inconsiderable and has been wholly applied.

Charge the contrary; that the defendants ought to set forth an account of the personal estate and their application thereof, and of the rents of the real estate received by them.

Charge—that a guardian and receiver ought to be appointed and the title deeds brought into action.

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That the defendants threaten to sell the stock.

such transfer. All which actings, &c. [*see form VI. p. 5, interrogating to the stating and charging parts.*]

Prayer.

And that the said defendants may answer the premises; and that an account may be taken of the personal estate and effects of the said intestate R. T. which have been received or possessed by the said defendants D. C. and J. C. or by any other persons or person by their or either of their order or to their or either of their use, and also an account of the said intestate's funeral expenses and just debts; and that the said intestate's personal estate may be applied in the payment of his funeral expenses and just debts in a due course of administration: and that the clear residue thereof may be ascertained, and the shares of your orators and oratrix therein laid out and secured in and by this honorable court for their benefit. And that an account may also be taken of the rents and profits of the said intestate's real estates which have been received by the said defendants or either of them or by any other person or persons by their or either of their order or to their or either of their use; and that what shall be found due upon such account may in like manner be secured by this honorable court for the benefit of your orator R. T. And that some proper person or persons may be appointed the guardian or guardians of your orators and oratrix with suitable allowance for their maintenance and education. And that some proper person may also be appointed by this honorable court to receive the rents and profits of the real estates of the said intestate. And that the said defendants D. C. and J. his wife may be directed to deposit all the title-deeds evidences and writings relating to the said real estates in the hands of one of the masters of this honorable court, and that in the mean time the said defendants D. C. and J. C. may be restrained by the injunction of this honorable court from selling or transferring the said sums of £—— 5*l.* per cent. bank annuities and £—— 3*l.* per cent. consolidated bank annuities; and that the said Governor and Company of the Bank of England may in like manner be restrained from permitting such sale or transfer. [*And for further relief, see form VIII. p. 5.*] May it please, &c. [*see forms No. 1. and 4, p. 6.*]

*Note.*—As soon as this bill is filed, the Bank of England should be served with a subpoena, with notice that the object of the suit is to restrain the transfer of the two sums of stock standing in the name of the intestate.

\*17. BILLS FOR A PARTITION.<sup>a</sup>

\*XCIX. *Bill by co-heiresses and their husbands for a partition of freehold estates.*(1)

In Chancery.

To, &c.

Humbly complaining show unto your lordship your orators and oratrixes T. K. of, &c. and C. his wife, L. G. of — and M. his

(1) A court of equity issues a commission of partition, not under the authority of any act of parliament, but on account of the extreme difficulty attending the process of partition at law. See 1 vol. Tr. Eq. by Fonbl. 18, n.; 17 Ves. 552, 2d ed.

The plaintiff must state upon the record his own title with precision, and also the titles of the defendants; and with the view to enable the plaintiff to obtain a judgment for partition, the court will direct inquiries to ascertain who are together with him entitled to the whole estate; *Agar v. Fairfax*, 17 Ves. 552; and see *Baring v. Nash*, on demurrer, on the ground that the bill had not stated the defendant's interest with sufficient certainty, 1 Ves. & B. 553. All parties necessary to join in the conveyance must be brought before the court; *Anon. Ca. note (b)*, 3 Swanst. 139.

A partition never affects the rights of third parties; thus where other persons have a right of common over the estate, that right will not be in the least affected by the partition, which regards only the freehold and inheritance of the soil; *Agar v. Fairfax*, 17 Ves. 544.

A bill for a partition may be sustained on behalf of a joint-tenant of a lease for years; *Baring v. Nash*, ub. sup.; or for a partition of tithes; *Baxter v. Knollys*, 1 Ves. sen. 495; but not between tenants in common of copyholds; *Scott v. Faussett*, 1 Dick. 299; S. C. 1 Madd. Pr. 248.

An infant tenant in common or joint-tenant may file a bill for a partition, or such a bill may be filed against him, and a partition will be decreed; but the conveyance will be respited till the infant is of age; 1 Madd. Ch. Pr. 247; *Lord Brook v. Lord Hertford*, 2 P. Wms. 518; *Attorney General v. Hamilton*, 1 Madd. Rep. 214.

If it appears that the defendant has received more than his share of the rents and profits of the estate, the court will direct an account; *Lorimer v. Lorimer*, 5 Madd. 363.

No costs are given until the commission; the costs of issuing, executing, and confirming the commission, are borne by the parties in proportion to the value of their respective interests, and no costs are allowed of the subsequent proceedings; see note (1), 1 Ves. & B. 555; 1 Madd. Ch. Pr. 249.

<sup>a</sup> The power of a court of equity to grant partition is not discretionary, but *ex debito justitiæ*, where the plaintiff has a clear legal title; *Wisely v. Findlay*, 3 Rand. 361; *Straughan v. Wright*, 4 Id. 493; *Burton v. Rutland*, 3 Humph. 435; *Trayner v. Brookes*, 4 Hey. 295; *Howey v. Goings*, 13 Ill. 95; *Hoxsie v. Ellis*, 4 R. I. 123; *Obert v. Obert*, 2 Stick. 98; *Lucas v. King*, Ib. 277; but if the title be controverted, the bill will be retained, to give the plaintiff an opportunity to establish his title at law; *Wilkin v. Wilkin*, 1 Johns. C. R. 111; *Garrett v. White*, 3 Ired. Ch. 131; *Boone v. Boone*, 3 Md. Ch. Decis. 497; inasmuch as equity has no jurisdiction to try the legal title to lands; *Manners v. Manners*, 1 Green, Ch. 384, and cannot allow a bill to be made a substitute for an action of ejectment, *The Alton Marine and Fire Insurance Company v. Buckmaster*, 13 Ill. 201, although it may decide on the rights of parties to participate in the division. *Stuart v. Coalter*, 4 Rand. 74. The court has jurisdiction where a portion of the property has changed hands, and the rights and interests of the several parties have become complicated and are in dispute. *Thayer v. Lane*, Harring. Ch. 247; see *Vanderwerker v. Vanderwerker*, 7 Barb. Sup. Ct. 221. All the parties interested in the premises, must be made parties to the suit. *Carpenter v. Shermerhorn*, 2 Barb. Ch. R. 314; but this does not include mortgagees and judgment-creditors whose interest in the land is only by way of lien as a security for a debt. *Wotten v. Cope-land*, 7 Johns. Ch. 140. A widow entitled to dower in an undivided share of the premises, is a necessary party. *Green v. Putnam*, 1 Barb. 500; see also Ib. 560. Where dower has been assigned to a widow, by giving her one-third of the net profits

That the father of the female plaintiffs was seised in fee of certain estates.

His death intestate leaving the female plaintiffs and defendant R. F. his co-heirs at law to whom the estates descended, subject to the dower of his widow.

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Her death.

Statement of the rights of plaintiffs and defendants.

Applications to the defendants.

Refusals by them.

wife, and J. V. of, &c. widow, That W. S. of, &c. deceased, the late father of your oratrixes C. K. M. G. and J. V. and also of E. F. wife of R. F. of, &c. (the defendants hereinafter named) was in his life-time and at the time of his death seised in fee-simple or of some other good estate of inheritance to him and his heirs of and in all that messuage or dwelling-house, &c. and also of and in all that other messuage, &c. All which said messuages lands and premises are situate lying and being in, &c. and being so seised he the said W. S. did many years since depart this life intestate, leaving M. S. his wife and your oratrixes and their said sister E. F. his four daughters and only children and co-heiresses him surviving; and upon his death the said messuages lands hereditaments and premises descended upon and came to your oratrixes and the said E. F. as such co-heiresses, subject only to the dower of their said mother M. S. And your orators and oratrixes further show unto your lordship that the said M. S. the widow and relict of the said W. S. \*departed this life sometime in or about the month of — whereupon your orators and oratrixes T. K. and C. his wife, and L. G. and M. his wife in right of your oratrixes C. and M. and also your oratrix J. V. and the said R. F. and E. his wife in right of the said E. have ever since been and now are severally seised in fee of and in the said messuages lands hereditaments and premises in four equal undivided parts or shares as tenants in coparcenary. And your orators and oratrixes further show unto your lordship that they have frequently applied unto and requested the said R. F. and E. his wife to join and concur with your orators and oratrixes in making a fair just and equal partition of the said premises between them, in order that their respective shares and proportions thereof might be allotted held and enjoyed in severalty. And your orators and oratrixes well hoped that the said R. F. and E. his wife would have complied with such their reasonable requests as in justice and equity it ought to have been. BUT NOW so IT IS may it please your lordship that the said R. F. and E. his wife combining and confederating to and with divers persons, &c. [see form IV. p. 5,] they the said defendants absolutely refuse to comply with such your orators and

of an estate, this is no impediment to a partition, or sale for partition, by the heirs. *Hassell v. Mizell*, 6 Ired. Eq. 392. In *Horsie v. Ellis*, 4 R. I. 123, it is said that dower before assignment, is not an estate, but a mere right; and the claimant of it need not be made a party to an action of partition of the lands in which she claims it. In general, where the defendant is in possession of the premises, claiming adversely to the plaintiff, partition will not be granted in equity; *Hosward v. Merwin*, 5 Barb. Sup. Ct. R. 51; *Weeks v. Weeks*, 5 Ired. Eq. 111; *Wilkin v. Wilkin*, 1 Johns. Ch. 111; *Manners v. Manners*, 1 Green, Ch. 384; *Lucas v. King*, 2 Stockton, Ch. 277; but it is said, in *Howey v. Goings*, 13 Ill. 95, that a bill will lie, notwithstanding an adverse possession, unless it has been continued long enough to bar a recovery under the Statute of Limitations.

The bill for partition should allege a seisin, or possession, in both the plaintiffs and defendants; *Maxwell v. Maxwell*, 8 Ired. Eq. 25; and should conform to the acts regulating descents, in order that rights of election and preference secured to any of the heirs may be enjoyed. *Roser v. Slade*, 3 Md. Ch. Decis. 91. In Georgia, equity does not ordinarily possess concurrent jurisdiction over partitions; if the remedy at law is complete, the party must appeal to that forum. *Rutherford v. Jones*, 14 Geo. 521. In North Carolina, it was held that in these cases, a court of equity had no jurisdiction, unless the parties are tenants in common. *Corbitt v. Corbitt*, 1 Jones, Eq. 114. Equity will not interfere with a court of law, in cases of partition.

oratrixes reasonable requests as aforesaid, pretending that your orators and oratrixes and the said defendants have ever since the death of the said W. S. and M. S. respectively their said late father and mother deceased, constantly and regularly divided the yearly rents and profits of all the said messuages lands hereditaments and premises equally between them, and that it will not be to the benefit or advantage of either of them to make an actual partition thereof. Whereas your orators and oratrixes charge and so the truth is that a fair just and equal partition of the said hereditaments and premises will tend greatly to the benefit and advantage of your orators and oratrixes and the said defendants, but they the said defendants under divers frivolous pretences absolutely refuse to join or concur with your orators and oratrixes therein. All which actings, &c. [see form VI. p. 5, *interrogating to the stating and charging parts.*]

Pretending that a partition will not be advantageous.

Charge the contrary.

And that a commission of partition may be issued out of and under the seal of this honorable court, and directed to certain commissioners therein named to divide and allot the said messuages lands hereditaments and premises in equal fourth parts or shares; and that one full and equal fourth part or share may be allotted and conveyed unto your orator and oratrix T. K. and C. his wife, and the heirs and assigns of your oratrix C. K.; that one other full and equal fourth part or share may be allotted and conveyed unto your orator and oratrix L. G. and M. his wife, and the heirs and assigns of your oratrix M. G.; and that one other full and equal fourth part or share may be allotted and conveyed unto your oratrix J. V. her heirs and assigns; And that your orators and oratrixes T. K. and C. his wife, L. G. and M. his wife, and J. V. may severally hold and enjoy their respective allotments of the said hereditaments and premises according to the natures thereof in severalty; and that all proper and necessary conveyances and assurances \*may be, (2) executed for carrying such partition into effect. [And for further relief, see form VIII. p. 5.] May it please, &c. [see form No. 1, p. 6.]

Prayer.

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C. Prayer for a partition; that plaintiff's share may be conveyed to her in fee; that the title-deeds may be brought into court, and that such of them as relate solely to the premises to be allotted to the plaintiff may be delivered to her, together with possession of the same premises.

And that a fair partition may be made of the said premises and of the lands thereto belonging into three equal parts, and that a commission of partition may issue for that purpose, and that the particulars thereof which shall be allotted to your oratrix may be duly conveyed to the use of her and her heirs for ever, free from all incumbrances, and that all proper parties may join in such conveyance,

(2) If the defendants have the title-deeds in their possession, refer to the two following forms.

your oratrix hereby offering thereupon to convey all her right and interest in the other part of the said lands and premises as this honorable court shall direct; and that the title-deeds and writings relating thereto may be brought into this honorable court or left in the hands of some indifferent person for the benefit of your oratrix and the said defendants; and that such of them as shall appear solely to relate to such particulars of the said estate or premises as shall be allotted to your oratrix may be delivered to her, and that the remainder of the said deeds or writings or such of them as shall appear to relate jointly or equally to all the said premises may be preserved and taken care of by and under the direction of this honorable court, for the mutual benefit and advantage of your oratrix and the said defendants, and that your oratrix may be at liberty to take copies thereof; and that possession may be delivered to her of such parts of the said lands and premises which shall be so allotted to her. [And for general relief.]

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\*CI. *Statement of the applications made to the defendants for a partition, and to deposit the title-deeds in the hands of some indifferent person for the benefit of all parties;*

*Prayer for a partition and conveyance of plaintiff's share to him in fee; for an apportionment of the rents and for a receiver in the meantime; and that the title-deeds may be brought into court and deposited with a master; that such of them as relate to any part or portion of the estate may be delivered to the party entitled thereto, and that the remainder may remain with the master.*

That *plaintiff* hath applied to the said defendants to join with him in making a fair partition and division of the said estate among them or such of them as are justly entitled thereto or interested therein according to their respective shares therein, so that each party may enjoy his own part and share in severalty; and the said parties or some of them having in their his or her custody or power several deeds and writings relating to the said estate, *plaintiff* hath in like manner requested them to deposit the same in the hands of some indifferent person, so that the same may be preserved for the benefit of all persons interested therein.

And that the parts and shares jointly belonging to *plaintiff* and all other the parties hereinbefore named of and in the said estate may be ascertained, and that a fair partition and division may be made of all such estate between *plaintiff* and all other persons who shall appear to be interested therein, and that the particulars thereof which shall be allotted to *plaintiff* as his share thereof, may be thenceforth held and enjoyed by him and his heirs and assigns in severalty, and that the same may be conveyed to him his heirs and assigns for ever, free from all incumbrances, and that all proper parties may join in such conveyance, and that possession of such particulars may be

delivered to *plaintiff*; and that in the meantime one or more person or persons may be appointed to receive the rents and profits of the said estate for the benefit of *plaintiff* and all other persons interested therein, and that such rents and profits may be divided and paid between *plaintiff* and all such other persons according to such their respective rights and interests therein; And that all the title-deeds and writings relating to the said estate may be brought into this honorable court and there deposited for the benefit of *plaintiff* and all other persons interested therein; and that after the making of such partition and division, such of the said title-deeds and writings as shall appear to relate solely to any particular thereof which shall be allotted to any one person may be delivered to such person, and that the rest of such title-deeds and writings may be kept in the hands of one of the masters of this honorable court for safe custody as aforesaid, and that your orator may be at liberty to take copies thereof. [And for further relief.]

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\*18. BILLS RELATING TO PARTNERSHIP MATTERS.<sup>b</sup>

[ \*302 ]

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CII. *Bill by one partner against another in the business of carpenters and builders, for an account of partnership transactions, the defendant having entered into various speculations without the consent of the plaintiff, and charged the loss of such speculations to the firm. The defendant having also hindered the plaintiff from attending at the place of business, the plaintiff took other premises and carried on business in the partnership name.—The bill also prays for an injunction to restrain the defendant from receiving the partnership moneys, and for a receiver, and also for directions as to the future management of the business.*(1)

To, &c.

Humbly complaining sheweth unto your lordship your orator H. B. of, &c. carpenter and builder, That in or about the month of

(1) In the case of *Forman v. Homfray*, 2 Ves. & B. 329, it was held that no relief could be had on a bill by one partner against another, not praying a dissolution; but in *Harrison v. Armitage*, 4 Madd. 143, the Vice-Chancellor held that one partner might file a bill against his co-partner for an account, since it was the only remedy he had; and observed that *Forman v. Homfray* applied only to a case of *interim management*, and that an injunction would not be granted in such case unless the bill prayed a dissolution of the partnership.

In the case of *Chapman v. Beach*, 1 Jac. & W. 594, the Lord Chancellor held that a receiver could not be appointed unless it appeared that there had been such an abuse of good faith between the parties as to entitle the plaintiff to a dissolution; and in the case of *Marshall v. Colman*, 2 Jac. & W. 266, the court refused a motion for an injunction to restrain the breach of a covenant in articles of partnership which

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<sup>b</sup> Even after a judgment recovered against the ostensible partners of a firm, a bill may be sustained against dormant partners, if some special cause for relief be set

— your orator agreed with W. P. of, &c. carpenter and builder, the defendant hereinafter named, to become a partner with him in

had not been infringed upon for any length of time, the bill not praying a dissolution of partnership.

Where a bill was filed by three of the partners in a numerous trading company, claiming certain privileges under the articles of copartnership, against the members of the committee for managing the commercial concerns of the company, it was dismissed; *Baldwin v. Lawrence*, 2 Sim. & Stu. 26; but the Vice-Chancellor observed that the question would have been different if the plaintiffs had filed their bill in behalf of themselves and all other the shareholders not members of the committee, praying for the inspection of books in the custody or power of the committee; and drew a distinction between the case and one where an individual *not being a partner*, is permitted to file a bill against a few members of a numerous partnership or club; see the cases referred to in the note, *ib.*

Partners are joint-tenants in the stock and all effects; but part-owners of a *ship* are considered only as tenants in common and not as joint-tenants; 1 Madd. Ch. Pr. 93; *Ex parte Young*, 2 Ves. & B. 242.

Although a partnership is entered into for a term of years, it becomes dissolved by the death of either of the partners during the term, unless there be express stipulations to the contrary; *Gillespie v. Hamilton*, 3 Madd. Rep. 254; and see further, *Furr v. Pearce*, *ibid.* p. 74; *Vulliamy v. Noble*, 5 Mer. 614; 1 Madd. Ch. Pr. 94; *Brown v. De Tastet*, Jac. R. 284; *Alder v. Fouracre*, 3 Swanst. 489; *Elliot v. Brown*, *ib.*; *Webster v. Webster*, *ib.* p. 490; *Beak v. Beak*, *ib.* p. 627.

A partnership without any agreement for continuance, may be dissolved at any time when either party thinks proper, subject to the proper accounts; *Peacock v. Peacock*, 16 Ves. 50, 2d ed., and the cases there referred to; see also *Master v. Kirton*, 3 Ves. 74.

forth, as, that the plaintiff was kept in ignorance of the partnership by undue means, and has used diligence to inform himself. *Penny v. Martin*, 4 Johns. C. R. 566. A creditor cannot, unless he has recovered a judgment for his debt, sustain a bill to restrain the partners from applying the partnership property to their separate debts, and for the appointment of a receiver, though it seems one of the partners might file such a bill. *Clement v. Foster*, 3 Ired. Ch. 213; *Greenwood v. Broadhead*, 8 Barb. Sup. Ct. 593. See, however, *Ketchum v. Durkee*, 1 Hoff. C. R., where the contrary seems to be implied. A bill by a partner for an account, will not be defeated, where the partnership is admitted, by a denial in the answer that anything is due, but the plaintiff will still be entitled to an account; *Scott v. Pinkerton*, 3 Edw. Ch. 70; and if the plea deny the partnership, it must be supported by an answer to the facts charged in the bill as constituting a partnership. *Everitt v. Watts*, 3 Edw. Ch. 486; *S. C.* 10 Paige, C. R. 82. All the partners should be joined in a bill to settle the partnership concerns; *Waggoner v. Gray*, 2 Hen. & M. 603; but, as on the death of one of the partners, the property and responsibility of the firm survive to the co-partners, the personal representatives of the decedent need not be made parties. *Jones v. Hardesty*, 10 Gill & J. 404; *Robinson v. Thompson*, 1 S. & M. Ch. 454; *Southard v. Lewis*, 4 Dana, 148. Hence it has been held, that where a bill has been brought against partners, and one of them dies, no revivor against his representatives is necessary, but the bill may proceed against the survivors. *Hammond v. St. John*, 4 Yerg. 107. But a creditor may file a bill against the representatives of a deceased co-partner, if he avers therein, and also proves, that the surviving members of the firm are insolvent. *Lawrence v. Trustees*, 2 Denio, 577. If a person is named as a partner in a bill for an account, he may demur; and if a partner has transferred his interest to a third person, such person must be made a party to a bill to settle the partnership concerns. *White v. White*, 4 Md. Ch. Decis. 418.

Chancery will take the property of the firm out of the possession of a surviving partner, and commit it to a receiver, and direct him to make sale of it, if the survivor neglects or refuses within a reasonable time to close up the business of the firm, and settle its concerns. *Holden v. McMakin*, 1 Parsons, Eq. Ca. (Penna.) 277. A bill for an account may be filed, where it does not contemplate a dissolution of the partnership, and a final winding up of its affairs. *Ib.* Where a partner complainant does not show by his bill that the partner defendant is disposing of the effects of the firm, in opposition to his expressed wishes or views; or that by himself, agent, or attorneys, he has proposed to take part in the collection and application of the effects, and has been prevented by the defendant, or that the defendant has offered any opposition to him, and the answer denies that the defendant is proceeding against the



his said trade and business, and thereupon a certain indenture of two parts bearing date on or about, &c. was made and executed by and between your orator and the said W. P. which among other things \*therein contained was in the words and figures following, (that is to say:) [*stating the deed.*] And your orator further sheweth that the said partnership trade and business was accordingly entered upon and carried on by the said W. P. and your orator pursuant to the provisions of the said indenture, and the same hath ever since continued and now continues; and your orator hath from time to time in all things duly conformed to the stipulations and agreements in the said indenture contained. And your orator further sheweth unto your lordship that the said W. P. hath since the commencement of the said partnership been in the habit of receiving all large sums of money, and of drawing all checks and bills of exchange on the partnership account; but the said W. P. hath not duly and regularly entered all such transactions in the partnership books of account, but hath entered therein only a small part of such transactions, and hath kept your orator in ignorance with regard thereto; and the said W. P. hath drawn many bills and given many acceptances in the name of the partnership firm not in respect of the partnership concerns but for his own private purposes. And your orator further sheweth that notwithstanding the provisions in the said partnership articles that the partnership accounts should be duly stated and made up on the — day of — in each year, yet the said W. P. hath not yet stated and made up the partnership accounts to the — day of — although he hath been repeatedly applied to for that purpose. And your orator further sheweth unto your lordship that after the formation of the said partnership the said W. P. without consulting or communicating with your orator took in his own name certain ground and premises in —, and also in — and the said W. P. built thereon, and the carpenter's work to such respective buildings was done by the partnership workmen and from the partnership stock, but all other workmen were employed therein by the said W. P. without any communication with your orator. And your orator further sheweth that such several speculations having proved unprofitable, and a considerable loss having been incurred by them, the said W. P. hath lately pretended that all such speculations were entered into by him on the partnership account, and that your orator is to bear his proportion of the loss. And your orator further sheweth that in or about, &c. the said W. P. took a lease of premises in — in his own name, and the said W. P. proceeded to build a house thereon, and represented to your orator that he was building it for a Mr. R. and the carpenters' work was by desire of the said W. P. at first entered in the partnership books to Mr. R.'s account; but the said W. P. afterwards informed your orator that he was to build the house on his own account, and the carpenters' work was from thence considered as the private debt of the said W. P. And

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That defendant has received all large sums of money, and drawn checks, &c. and has not entered all such transactions in the partnership books, and hath drawn bills for his own purposes.

That the accounts have not been made up.

That the defendant took other premises on speculation, without consulting plaintiff, and built thereon;

Such speculations having proved a loss, the defendant pretends that it was made on the partnership account.

That the defendant took a lease of other premises, and pretended that he was building a house thereon for a Mr. R., but the

rights, or contrary to the interests of the complainant, or that the latter has made any demand upon him for any of the property of the firm, or the individual property, a court of equity will not appoint a receiver to wind up the business. *Terrell v. Goddard*, 18 Geo. 664; see also, *Boyce v. Burchard*, 21 Id. 74.

same having proved a loss, he pretends that it was done on the partnership account.

Application by defendant

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to plaintiff's father for a loan, and on refusal by him disputes arose between plaintiff and defendant and proposals made by defendant for a dissolution, but not carried into effect.

Plaintiff prevented by the defendant from attending to the business.

Plaintiff took other premises in the name of the firm.

Proposals made on part of the plaintiff for a dissolution, of which the defendant took no notice.

your orator further sheweth that the expense of building the said house, including the said carpenters' work amounted to £—, and that the said W. P. afterwards sold the said house for £— only, and then insisted that it was a speculation on the partnership account, and that your orator should bear his proportion of the loss. And your orator further sheweth unto your lordship that the said W. P. in the beginning of the year — applied to the father of your orator for a loan of money, alleging that the \*trade required more, and that your orator had not a sufficient capital in the trade. And your orator further sheweth that your orator's father upon that occasion referred to your orator, and being informed of the reasons which your orator had to complain of the conduct of the said W. P. refused to advance any further sum of money, and thereupon differences and disputes arising between the said W. P. and your orator, the said W. P. proposed terms for the dissolution of the partnership to which your orator acceded, but the said W. P. afterwards changed his terms, and your orator not being able to come to any agreement in that behalf with the said W. P., gave notice to the said W. P. that all treaty for a dissolution was at an end. And your orator further sheweth that your orator afterwards continued to give his attention to the partnership business as usual although he was upon many occasions abused and insulted by the said W. P. and your orator further sheweth that on the — day of — last your orator was at the partnership counting-house when a message came from Mr. — requesting Messrs. P. and B. to send a man to his house to do some carpentering jobs, and your orator thereupon directed one of their men to go accordingly; but the said W. P. overhearing what passed desired their foreman P. not to let the man go; and your orator then inquiring from the said W. P. what he meant by such conduct, the said W. P. answered that he did not choose the man should go, and that your orator had better go about his business and not come there, and that none of the men should do anything he ordered them to do; and the said W. P. added some terms of opprobrium and abuse of your orator; and the said W. P. then ordered C. their clerk to keep the books himself, and to lock up the safe in order that your orator might not have access to them; and your orator having a pass key to the lock of the safe door, and to other locks on the partnership premises, the said W. P. caused the locks to be changed. And your orator further sheweth unto your lordship that being compelled by such conduct on the part of the said W. P. to absent himself from the partnership business, your orator forthwith took other premises in — in the name of the partnership firm for the purpose of carrying on business there on the joint account of the said W. P. and himself pursuant to the aforesaid articles of partnership; but your orator at the same time considering it to be desirable that a dissolution of the partnership should be effected, if it could be done upon fair and reasonable terms, the solicitors of your orator at his request on or about, &c. wrote and sent a letter to the said W. P. in the words and figures or to the purport and effect following; that is to say,—Sir "In consequence," &c. And your orator further sheweth that the said W. P. hath taken no

notice of the said letter, nor hath since in any manner communicated with your orator, and your orator hath from thence continued to carry on business in the partnership name and on the partnership account in the said new premises in —, but hath at all times been and is now willing and desirous to attend to the partnership business at the former premises if requested or permitted so to do by the said W. P. And your orator humbly insists that the said W. P. ought to come to an account of the partnership dealings and transactions from the commencement thereof, and that \*the said W. P. ought to be restrained by the injunction of this honorable court from receiving and collecting the partnership debts and moneys due and to accrue due; and that some proper person ought to be appointed by this honorable court to receive and collect the same; and that proper directions ought to be given by this honorable court for the conduct and management of the said partnership business in future for the joint and equal benefit of the said W. P. and your orator. To THE END, [see form VI. p. 5, interrogating to the statements.]

That plaintiff has carried on the partnership business in other premises.

That defendant ought to account, that a

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receiver ought to be appointed, and directions given for the future management of the business.

And that the said defendant may answer the premises and that an account may be taken of all and every the said co-partnership dealings and transactions from the time of the commencement thereof; and also an account of the moneys received and paid by your orator and the said defendant respectively in regard thereto, your orator being ready and willing and hereby offering to account for the partnership dealings and transactions which have been carried on by your orator in the premises in — aforesaid; and that the said defendant may be decreed to pay to your orator what upon the taking of the said accounts shall appear to be due to him, And that in the meantime the said defendant W. P. may be restrained by the order and injunction of this honorable court from collecting or receiving any partnership debts or other moneys, and that some proper person may be appointed to collect and receive the same; and that proper directions may be given for the conduct and management of the said partnership business in future, for the joint and equal benefit of your orator and the said W. P. [And for further relief, see form VIII. p. 5.] May it please, &c. [see forms No. 1 and 4, p. 6.]

CIII. *Bill by copartners against the acting partner, who had been arrested and imprisoned for debt, for a dissolution as to him, and to have the usual accounts taken, and for an injunction to restrain him from collecting partnership debts.*

To, &c.

Humbly complaining show unto your lordship your orators A. B. and C. D. of, &c. That by articles of agreement bearing date, &c. and made and executed by and between your orators of the first part, G. G. of, &c. of the second part, and I. G. and H. G. of, &c. Articles of partnership.

the defendants hereinafter named, of the third part, After reciting, &c. [*stating the deed, and two deeds poll endorsed thereon.*] And your orators further show unto your lordship that the said partnership business was entered upon and continued in pursuance of the said articles of agreement under the direction and attention of the said I. G. and H. G. until on or about, &c. and the said I. G. and H. G. were respectively provided with houses to reside in at the copartnership expense, and regularly took and received out of the \*copartnership effects the yearly sum of £—— in the proportions stipulated in the said articles; but the said business not having proved as beneficial as was expected, neither your orators nor the persons under whom they claim in the said concern, have ever had or taken any profits therefrom, but the whole of the moneys which by the said recited indenture are stated to have been due to your orators now remain due to your orators, according to their several rights and interests therein as aforesaid, together with all subsequent interests thereon. And your orators further show unto your lordship that on or about, &c. the said I. G. was arrested at the suit of ——— for a debt of £——, and hath in consequence of such arrest ever since been and now is a prisoner in the King's Bench prison. And your orators further show that by reason of such imprisonment of the said I. G. the said copartnership concern hath been and is greatly discredited, and great loss hath been sustained in the said business by the absence of the said I. G. therefrom, and the said I. G. having no capital in the said concern and assisting therein only by his personal attention, which by such his imprisonment hath been and continues to be wholly lost, your orators have made frequent applications to the said I. G. to withdraw from the said copartnership and to come to a just and true account with your orators for all and every the copartnership dealings and transactions, with which just and reasonable requests your orators hoped that the said I. G. would have complied. BUT NOW SO IT IS, &c. [*see form IV. p. 5.*] And the said defendant I. G. pretends that he hath a right to continue to share in the profits of the said joint concern, and hath even a right to draw therefrom in the first place the annual sum of £——, being his proportion of the said sum of £—— agreed to be paid to the said defendants for their attention to and management of the said business. Whereas your orators charge that the said I. G. having only contributed to the said copartnership business by his personal attendance upon the concerns thereof, hath by his inability to assist therein lost and forfeited all right to continue to share in the profits, and in particular hath lost and forfeited all right to any proportion of the said annual sum of £—— which was allowed to the said defendants in the proportions aforesaid, expressly for their management of and attendance upon the said business. And your orators further charge that the said defendant I. G. hath since his imprisonment suffered the house in which he resided at the expense of the said copartnership to become greatly dilapidated and out of repair, to the great injury of the said copartnership. And your orators further charge that the said H. G. refuses to join your orators in

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The business not having proved profitable, the plaintiffs' moneys still remain due to them according to their interests under the partnership deed, together with interest.

That defendant I. G. was arrested for debt.

And the partnership business thereby sustained great loss.

Applications to the defendant I. G. to withdraw from the business and to account;

Pretence that he is entitled to share in the profits, and to draw for his annual allowance.

Charge that he has forfeited all right thereto.

Charge that the house in which he resided has become greatly out of repair. That the other

this suit. All which actings. &c. [*see form VI. p. 5, interrogating to the stating and charging parts.*]

defendant re-  
fuses to join  
in the suit.  
Prayer.

And that the said defendants may answer the premises. And that the said copartnership as far as respects the said defendants I. G. may be declared to be dissolved. And that accounts may be taken of all and every the said copartnership dealings and transactions, as far as relates to the said I. G.; and that the said I. G. may be directed to pay to the said continuing copartners what if anything, shall upon such account appear to be due from him, your orators being ready and willing and hereby offering to pay to the said I. G. \*what if any thing shall appear to be due to him from the said joint concern; and that the said defendant I. G. may be directed to assign to your orators and to the said H. G. his share and interest in and to the said copartnership estate and effects. And that the said I. G. may in the mean time be restrained by the order and injunction of this honorable court from disposing of any part of the said copartnership moneys, or from collecting or receiving any of the debts due and owing to the said copartnership business. [*And for further relief see form VIII. p. 5.*] May it please, &c. [*see forms No. 1, and 4, p. 6.*]

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CIV. *Bill for a dissolution of a partnership between auctioneers, and for an injunction to restrain one of the defendants from collecting debts.*

To, &c.

Humbly complaining sheweth unto your lordship your orator P. C. of, &c. That in or about the month of — your orator entered into an agreement with C. B. of, &c., and C. F. of, &c., the defendants hereinafter named, to form a partnership with them in the business of auctioneers and appraisers, which agreement was reduced into writing and signed by your orators and the said defendants, and was in the words and figures or to the purport and effect following (that is to say:) [*stating the same.*] As in and by the said agreement reference being thereunto had will appear. And your orator further sheweth that the said copartnership business was entered upon and hath ever since continued to be carried on by your orator and the said defendants in pursuance of and under the aforesaid agreement, no articles or other instrument having ever been prepared and executed between them. And your orator further sheweth unto your lordship that having much reason to be dissatisfied with the conduct of the said C. B. and being desirous therefore to dissolve the said partnership, your orator on or about — caused a notice in writing signed by your orator to be delivered to the said C. B. and C. F. in the words and figures or the purport and effect following (that is to say:) “In conformity,” &c. &c. As in and by such written notice now in the custody or power of the said defendants or one of them when produced will appear. And your orator further

Agreement for  
co partnership  
reduced into  
writing.

No articles or  
other instru-  
ment ever ex-  
ecuted.

Plaintiff desi-  
rous to dis-  
solve the part-  
nership, caus-  
ed notice to be  
given to the  
defendants.

That defendant C. B. has applied large sums to his own use, and concealed the same, and has never balanced the books.

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Plaintiff requested him to pay the moneys received into the bankers, which he refused to do, and has retained the same.

Applications to the defendant C. B.

Pretence that defendant C. B. has not received more than his due proportion of the profits.

Charge the contrary; and that he has received £— and upwards, and is proceeding to collect in the debts, and that he ought to be restrained therefrom.

That the other defendant refuses to join in the suit.

Prayer.

showeth that the said C. B. hath from time to time since the commencement of the said partnership applied to his own use from the receipts and profits of the said business very large sums of money, greatly exceeding the proportion thereof to which he was entitled, and in order to conceal the same the said C. B. who has always had the management of the said copartnership books hath never once balanced the said books. And your orator further showeth that having in the beginning of the year — discovered that the said C. B. was greatly indebted to the said copartnership by reason of his application of the partnership moneys to his own use, your orator in order to form some check upon the conduct of the said C. B. requested that he would pay all copartnership moneys which he received into their bankers, and would draw for such sums as he had occasion for, but the said C. B. hath wholly disregarded such request, and hath continued to apply the partnership moneys received by him to his own use, without paying the same into the bankers, and hath also taken to his own use moneys received by the clerks, and hath by such means greatly increased his debt to the partnership, without affording to your orator and the said C. F. any adequate means of ascertaining the true state of his accounts. And your orator further showeth, that he hath by himself and his agents from time to time applied to the said C. B. and hath requested him to come to a full and fair account in respect of the said copartnership transactions, with which just and reasonable requests your orator well hoped that the said defendant would have complied as in justice and equity he ought to have done. BUT NOW SO IT IS, &c. [*see form IV. p. 5.*] the said defendant C. B. absolutely refuses so to do, and and he at times pretends that he hath not received and applied to his own use more than his due proportion of the partnership profits. Whereas your orator charges the contrary thereof to be the truth, and so it would appear if the said defendant would set forth a full and true account of all and every his receipts and payments in respect of the said partnership transactions, and of the gains and profits which have been made in each year since the commencement of the said partnership. And your orator charges that the said C. B. hath in fact received the sum of £— and upwards beyond his due proportion of the partnership profits, and that he is nevertheless proceeding to collect in the partnership debts and moneys, whereby the balance due from him will be increased to the great loss and injury of your orator and the said C. F. And your orator charges that the said C. B. ought therefore to be restrained by the order and injunction of this honorable court from collecting and receiving any of the said partnership debts and moneys. And your orator charges that the said C. F. refuses to join your orator in this suit. All which actings, &c. [*see form VI. p. 5, interrogating to the stating and charging parts.*]

And that the said defendants may answer the premises; and that the said copartnership may be declared void, and that an account may be taken of all and every the said copartnership dealings and transactions from the time of the commencement thereof; and also an account of the moneys received and paid by your orator and the

said defendants respectively in regard thereto. And that the said defendants may be decreed to pay to your orators what, if anything, shall upon the taking of the said accounts appear to be due to him, your orator being ready and willing and hereby offering to pay, to the said defendants or either of them what, if anything, shall upon the taking of the said accounts appear to be due to them or either of them from your orator. And that in the meantime the said defendant C. B. may be restrained by the order and injunction of this honorable court from collecting or receiving the partnership \*debts or other moneys. [*And for further relief, see form VIII. p. 5.*] May it please, &c. [*see forms No. 1, and 4, p. 6.*] [ \*309 ]

J. L.

*Pray subpoena against C. F. and  
subpoena and injunction against  
C. B.*

CV. *Bill for an account of partnership dealings between solicitors after a dissolution, and for a receiver, and also for an injunction to restrain the defendant from receiving any of the partnership debts.*

To, &amp;c.

Humbly complaining sheweth unto your lordship your orator A. B. of —, That on or about — your orator and P. H. W. of, &c. the defendant hereinafter named, entered into co-partnership together as attorneys and solicitors, your orator engaging to bring into the business the sum of £—— and being to receive one-third part or share of the profits; and the said P. H. W. engaging to bring into the business the sum of £—— and being to receive two-third parts or shares of the said profits. And your orator further sheweth unto your lordship that your orator accordingly brought into the business the said sum of £——, and that the said co-partnership was carried on and continued until the — day of — when the same was dissolved by mutual consent and the usual advertisement of such dissolution was inserted in the London Gazette. And your orator further sheweth that the said co-partnership business was carried on in a house in — which at the time of the dissolution of the said co-partnership was held by the said defendant and your orator under an agreement for a lease for — years from Lady-day —, and it was verbally agreed between the said defendant and your orator that the said defendant should take to himself the benefit of the said agreement accounting to your orator for his proportion of the value thereof, and in pursuance of such agreement the said defendant hath ever since continued and now is in possession of the said house. And your orator further sheweth unto your lordship that no settlement of the said copartnership accounts hath ever been made between your orator and the said defendant, and that since the said dissolution your orator hath repeatedly applied to the said defendant to come to a

Plaintiff and defendant entered into partnership as solicitors.

Partnership dissolved by mutual consent.

Defendant took the lease of the premises where the business was carried on. That no settlement of accounts has taken place.

Applications to the defendant.

Charge that he has got possession of the books, and refuses to permit plaintiff to inspect the same, or to account.

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Charge that plaintiff has paid part of the debts.

That a large balance is due from the defendant.

That he is proceeding to collect in the debts and ought to be restrained therefrom.

Prayer.

final settlement with respect thereto. And your orator well hoped that the said defendant would have complied with such your orator's reasonable requests as in justice and equity he ought to have done. BUT NOW SO IT IS, &c. [see form VI. p. 5.] the said defendant absolutely refuses so to do. And your orator charges that the said defendant hath possessed himself of the said copartnership books and hath refused to permit your orator to inspect the same, and hath also refused to render to your orator any account of the copartnership moneys received by him. And your orator charges that he has since the said dissolution paid the sum of £—— in respect \*of the copartnership debts. And your orator further charges that upon a true and just settlement of said accounts it would appear that a considerable balance is due from the said defendant to your orator in respect of their said copartnership dealings; but nevertheless the said defendant is proceeding to collect in the said copartnership debts and to apply the same to his own use which the said defendant is enabled to do by means of his possession of the books of account as aforesaid. And your orator charges that the said defendant ought to be restrained by the injunction of this honorable court from collecting in the said debts, and that some proper person ought to be appointed by this honorable court for that purpose. All which actings, &c. [see form VI. p. 5, *interrogating to the stating and charging parts.*]

And that an account may be taken of all and every the said late copartnership dealings and transactings until the time of the expiration thereof, and that the said P. H. W. may be directed to pay to your orator what, if anything shall upon such account appear to be due from him, your orator being ready and willing and hereby offering to pay to the said P. H. W. what, if anything, shall appear to be due to him from the said joint concern. And that some proper person may be appointed to receive and collect all moneys which may be coming to the credit of the said late copartnership. And that the said P. H. W. may in the meantime be restrained by the order and injunction of this honorable court from collecting or receiving any of the debts due and owing thereto. [And for further relief see form VIII. p. 5.] May it please, &c. [see forms No. 1 and 4, p. 6.]

*CVI. Charging part in a bill for a settlement of partnership accounts between solicitors; plaintiff impeaching an account which had been furnished by the defendant; lists of omissions and overcharges therein annexed in schedules to the bill.*

Pretence that no partnership was entered into, or that defendant has duly accounted,

And the said defendant pretends that he never agreed to enter into partnership with your orator nor ever subscribed such memorandum or agreement as aforesaid, or any other memorandum or agreement for that purpose; but at other times admitting the contrary thereof to be true, he pretends that he hath constantly from time to time duly and regularly accounted with your orator for all the



several sums of money received by him the said defendant on account of the said partnership business, and the produce gains and profits thereof, and that your orator hath from time to time received his share and proportion of such moneys and the clear gains or profits thereof, after deducting the necessary outgoings and expenses attending or relating to the said copartnership business, and that all the accounts relating thereto have been regularly adjusted and settled down to the present time. Whereas your orator charges the contrary of such pretences to be the truth, and that no accounts \*whatever have been ever adjusted or settled between your orator and the said defendant at any time since the commencement of the said copartnership, or in any manner relating thereto or to the business thereof, nor hath your orator received any sums or sum of money whatsoever from the said defendant on account of the said defendant's receipts respecting or relating to the said copartnership or the gains or profits thereof, all which the said defendant will at others times confess. But then he pretends that your orator from time to time since the commencement of the said partnership received from clients and other persons on account of the said copartnership and the business and profits thereof, sundry sums of money to a large amount in the whole, and greatly exceeding the amount of the several sums received by him the said defendant on the same or the like account, and also exceeding your orator's moiety or share of the clear profits or gains of the said copartnership business. Whereas your orator charges the contrary thereof to be the truth; and that the several sums received by your orator on the account aforesaid were trifling and inconsiderable in comparison with the several sums received by the said defendant on the same or the like accounts, and that the said several sums so received by the said confederate greatly exceed his moiety or share of the profits clear gains and produce of the said copartnership, and that upon a fair balance of all accounts relating to the matters aforesaid the said defendant is justly indebted to your orator in a large sum of money in respect thereof, and so the said defendant knows and has reason to believe and does believe, and so the same would appear in case the said defendant would set forth, as your orator humbly insists he ought to do, a full true and particular account of all his receipts and payments on account or in respects of or relating to the said copartnership business and the concerns thereof, and would produce all the books of account and other books and papers in which any entries are made relating thereto in his custody possession or power, but which he nevertheless refuses to do or to give your orator any account thereof or any satisfaction relating thereto. And sometimes the said defendant pretends that he hath delivered or sent unto your orator a full true and just account of all his receipts and payments in respect of the said copartnership and the business or concerns thereof, and he alleges that there are no errors omissions or mistakes therein. Whereas your orator charges that notwithstanding the said defendant hath delivered unto your orator an account which he pretends to be an account of all his receipts and payments in respect of the said copartnership from the commencement of the said copartnership and of the business or

and plaintiff received his share.

Charge the contrary, that

[ \*311 ]

no accounts were ever settled, and that plaintiff has not received any moneys on account of his share of the profits retained by the defendant.

Pretence that plaintiff has received large sums exceeding the share received by the defendant and also exceeding plaintiff's share of the profits.

Charge the contrary; that the sums received by the defendant far exceed his share, and that he is indebted to the plaintiff, which would appear from the accounts required.

That he refuses to produce the books, &c.

Pretence that defendant has furnished a full and true account.

Charge that an account furnished by him is false, and contains many errors, &c.

[ \*312 ]  
 Lists of omissions and overcharges annexed in schedules.

Pretence that the defendant has been always willing to account. Charge the contrary, and that many applications have been made to him with which he has refused to comply.

concerns thereof, yet your orator charges that the said pretended account is in many respects false unjust and untrue, and that there are divers errors mistakes omissions false and improper charges claims and particulars therein to the prejudice of your orator, and that the said defendant hath moreover inserted and taken credit therein for several sums of money which were not actually paid by him, and also for several other sums which ought not to have been brought into the said account, and with the payment whereof your orator or the said copartnership is by no means chargeable. And in particular your \*orator charges that the first schedule annexed or under-written to this his bill contains a list of several of the omissions made or items or articles omitted to be inserted in the said account to the prejudice of your orator, and that the second schedule hereunto annexed also contains a list of several overcharges or improper charges or items made in the said pretended account so delivered to your orator. All which the said defendant will at other times admit. But then he pretends that he hath been at all times ready and willing to come to an account with your orator, and to adjust and settle all the accounts relating to the matters aforesaid, without suit or litigation. Whereas your orator charges the contrary thereof to be the truth. And your orator further charges that he hath by himself and other persons made sundry different applications to the said defendant to come to an amicable settlement of the several accounts aforesaid, but that the said defendant hath refused to comply with all such applications and requests.

CVII. *Prayer of a bill filed after a dissolution of partnership between ironmongers, the defendants having agreed to exonerate the plaintiffs from the payment of the debts—the plaintiffs pray that an account may be taken of the debts due from the firm and remaining unpaid—that the defendants may be declared answerable for the amount thereof, and that the plaintiffs may be declared to have a lien for the same on the partnership stock and premises, and if necessary for a sale thereof in satisfaction of such debts.—Also for an injunction to restrain the defendant from selling the partnership stock, &c. and that a covenant entered into by the plaintiffs restraining them from carrying on the trade within forty miles may be reformed, according to the agreement of the parties.*

And that an account may be taken of all and every the debts and demands which were due from your orators and the said P. J. B. in their copartnership firm of — or in respect thereof at the time of executing the said indenture of the — day of —, and which have not been paid and satisfied by the said P. J. B. or the said other defendants, and that the said several defendants may be declared to be answerable for the amount of what shall be found due on such account. And that it may also be declared that your orators have a lien to the amount of what shall be found due on such

account upon the copartnership stock premises debts and effects which were assigned by your orators to the said P. J. B. in consideration of his engagement to exonerate your orators from the payment of such debts; and that if necessary the said copartnership stock premises and effects may be sold and applied in satisfaction of such debts under the decree of this honorable court, and that all proper directions may be given in that behalf. And that the said defendants may in the mean time be restrained by the injunction of this honorable court from selling assigning or disposing of the said copartnership stock premises and effects, and that the said covenant in the said indenture of the ——— \*day of ——— whereby your orators are restrained from engaging in or carrying on any part or branch of making or manufacturing iron under any modification whatsoever, or any articles or utensils made of iron within forty statute miles of ———, may be reformed according to the intent and agreement of the partners respecting the same as aforesaid. [*And for further relief.*]

[ \*313 ]

J. L.

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19. BILL TO HAVE A PORTION FOR YOUNGER CHILDREN RAISED.

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CVIII. *Bill to have a sum of money raised under the trust of a term of years created by a will for raising portions for the younger children of testator's son the tenant for life since dead; there being but one younger child, a daughter, the whole sum was settled upon her marriage in trust for the husband for life and after his death for the children of the marriage. The bill is filed by the husband and wife and their children, against the trustees of the settlement to whom the term had been assigned, and the first tenant in tail of the estates charged (an infant,) praying to have an account taken of the principal and interest due in respect of the portion, and for payment of the amount by the tenant in tail or in default of payment for a foreclosure, or otherwise for a sale of the premises comprised in the term,—and for payment of the arrears of interest due to the husband under the settlement.*(1)

Humbly complaining show unto your lordship your orators and oratrix C. C. of ——— esq. and the honorable C. G. H. (late C. G. H. F. spinster) his wife, and your oratrixes A. C. E. C. and F. C. infants under the age of twenty-one years, by your orator their father and next friend, That the right honorable T. lord F. late grandfather of the right honorable T. now lord F. (one of the defendants here- That the grandfather of

(1) On bill filed on behalf of younger children to raise portions out of real estate, the infant heir ought to be made a defendant, not a plaintiff; *Plunket v. Joice*, 2 Sch. & Lef. 159; and see generally on the subject of raising portions, 1 Madd. Pr. 494; et seq.; *Water v. Hutchinson*, 1 Sim. & Stu. 276; *Wynter v. Bold*, *ibid.* 507; *Noel v. Lord Walsingham*, 2 Sim. & Stu. 99; *Lady Poulett v. Earl Poulett*, 6 Madd. 167; *Windham v. Graham*, 1 Russ. 331.

the defendant lord F. was seised of divers estates which had been devised to him.

[ \*314 ]

Will of the grandfather of the defendant lord F.

A term of 500 years limited to trustees for raising portions for the younger children of testator's son who was tenant for life under the will.

inafter named) was in his life-time and at the time of making his will hereinafter mentioned and at the time of his death seised or well entitled in fee-simple of or to divers messuages manors lands tenements and hereditaments situate and being in the several counties of W. S. M. S. and H. which were of very considerable annual value, and had been devised to him by the will of T. then late lord F. deceased. And being so seised and entitled, and being of sound and disposing mind memory and understanding, the said T. lord F. the grandfather of the said defendant lord F. on or about the — day of — made his last will and testament in writing of that date (which was duly signed and published by him and attested as by \*law is required in cases of devises of real estates,) and thereby gave and devised all that the manor or lordship and capital messuage called —, and all other the messuages manors lands tenements and hereditaments then lately belonging to T. lord F. deceased which he was entitled to under his lordship's will or otherwise, in the counties of W. S. M. S. and H. or either of them, (except the manor of M. in the said county of W.) and also all messuages lands tenements and hereditaments part or parcel thereof at any time purchased of the then late lord M. together with such other estates then late the property of the said T. lord F. as were not thereinafter otherwise devised, with their rights and appurtenances whether freehold leasehold or copyhold, (subject nevertheless to the charge thereinafter mentioned for making up the deficiency, if any should arise in paying his legacies, therein mentioned, and all which legacies have been paid) To the use of his brother R. F. and his steward A. T. their executors administrators and assigns for the term of 99 years without impeachment of waste, Upon trust for the payment of certain debts and sums of money as therein mentioned; and after the determination of the said term and in the meantime subject thereto, To the use of his eldest son T. F. and his assigns for life; and after the determination of that estate by any means in his life-time, To the use of the right honorable E. earl of O. and earl M. and the right honorable T. lord viscount W. and their heirs during the life of the said T. F. in trust to preserve the contingent remainders; and from and after the death of the said T. F. to the use of J. H. and the Rev. R. F. clerk their executors administrators and assigns for the term of 200 years without impeachment of waste, Upon certain trusts which are all now satisfied; and after the determination of that estate and subject thereto; To the use of R. B. and the Rev. T. W. clerk their executors administrators and assigns for a term of 500 years to commence from the day of the decease of his said son T. F., Upon trust by and out of the rents and profits of the same manors hereditaments and premises or by sale or mortgage thereof, to raise any sums of money not exceeding in the whole the sum of £—— for and towards the portion and provision of all and every the younger child and children of the said T. F. in such parts shares and proportions under such restrictions and to be paid to him her or them at such time and times with such interest or maintenance as the said T. F. should by deed or will executed as therein mentioned appoint; and for want of such appointment to be equally divided between them if more than

one share and share alike. And after the determination of the said term of 500 years and subject thereto, To the use of the first and other sons of the said T. F. in tail male, with divers remainders over. And that said testator's will was that all the messuages or tenements which he held by lease from the trustees or devisees of the then late countess dowager of O. in the county of M. with their appurtenances, should go and be enjoyed by his said trustees and such person and persons upon such uses and for such purposes as the manor of W. and other the estates of the said T. lord F. deceased thereinbefore limited, as far as the nature thereof would admit; \*and he gave all other the leasehold estates late of the said T. lord F. which he was entitled unto by virtue of his lordship's said will to the said R. F. and A. T. their executors administrators and assigns for and upon the same uses and purposes as the said manor of W. and other the estates of the said T. lord F. as therein before limited or as near as by the tenure thereof the same could be limited, with the power of renewing such of the said leases as were renewable. And the said testator afterwards duly made a codicil to his said will, whereby after taking notice of the death of the said A. T. he appointed his son A. F. a trustee in his stead. As by the said will and codicil to which your orator and oratrixes crave leave to refer, when produced will appear. And your orator and oratrixes further show unto your lordship that the said testator departed this life sometime after having made his said will and codicil without having revoked or altered the same, save as the said will is altered by the said codicil, and the said testator left the said T. lord F. since deceased his eldest son and heir, who became entitled to an estate for life in the said premises devised to him as aforesaid, subject to the trusts of the said term of — years. And the said T. lord F. the son afterwards departed this life in the year —, leaving T. now lord F. one of the defendants hereinafter named his only son, and also leaving your oratrix C. G. H. now the wife of your orator his only daughter and younger child; and he did not in his life-time make any appointment affecting the said sum of £—. And the said defendant T. lord F. upon the death of his said father and by virtue of the aforesaid will, became entitled to all the said devised premises as tenants in tail subject to the said term of 99 years, and subject to the said term of 500 years upon the trusts of the said other term of 200 years having been duly satisfied. And your oratrix C. G. H. as the only daughter of her said father T. lord F. became entitled to have the said sum of £— raised upon the said devised premises by virtue of the trusts of the said term of 500 years. And your orator and oratrixes further show unto your lordship that your orator intermarried with your oratrix C. G. H. some time in or about the month of —, and by a certain indenture of four parts bearing date the — day of —, and made between your orator of the first part, your oratrix C. G. H. of the second part, the honorable E. F. of S. in the county of H. and the honorable A. F. of — of the third part, and the said R. B. the surviving trustee of the before-mentioned term of — years of the fourth part; and by a certain other indenture of three parts bearing even date with the preceding

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Codicil made, appointing a new trustee.

Death of testator, without revoking his will and codicil.

His eldest son became entitled as tenant for life.

His death leaving one son, an infant, who became entitled as tenant in tail, and one daughter, who became entitled to the whole portion, no appointment having been made.

Her marriage. Settlement of her portion for the benefit of her husband for life, and afterwards for the younger children of the marriage.

[ \*316 ]

Three young-  
er children  
plaintiffs.  
No interest  
paid upon the  
sum settled.

Applications  
made to the  
trustees to  
raise the por-  
tion with the  
arrears of in-  
terest ;

but they re-  
fuse to take  
any measures  
for raising the  
same, alleging  
that the ten-  
ant in tail is  
an infant, and

indenture, and made between your orator of the first part, your ora-  
trix C. G. H. of the second part, and the said E. F. A. F. of —,  
E. C. of —, and J. D. of — of the third part [*stating the deeds  
by which the said sum of £— was settled upon trust for the hus-  
band for life, and after his death for the benefit of the younger chil-  
dren of the marriage ;*] and by a certain other indenture bearing  
date the — day of —, and made between the said R. B. of the  
one part, and your orator and oratrix C. G. H. his wife of the other  
part ; and by a certain other indenture bearing date the — day  
of —, and made between your orator of the one part, and the said  
E. F. A. F. E. C. and J. D. of the other \*part [*stating the deeds, by  
which the premises comprised in the said 500 years term, and the said  
£— were assigned to the trustees.*] As by the said several inden-  
tures to which your orator and oratrixes crave leave to refer when  
produced will appear. And your orators and oratrixes further show  
unto your lordship that by virtue of the said several indentures your  
orator is become entitled to the interest of the said sum of £—  
for his life, and after your orator's death the said principal sum will  
become the property of your orator's younger children by your ora-  
trix his wife ; and in default of such younger children the same will  
become the absolute property of your orator. And your oratrixes  
A. C. E. C. and H. C. are as yet the only children of the said mar-  
riage. And your orator and oratrixes further show that no pay-  
ment hath been made to your orator in respect of the interest of  
the said sum of £— accrued due since the said marriage, but  
the whole of such interest now remains due and owing to your  
orator, although the interest made payable for the said sum of  
£— is at the rate of 4 per cent. only. And your orator being  
desirous of having the arrears of the said interest paid him, and of  
making a larger interest of the said money, which he would be en-  
titled to do in case the same were raised and paid upon the trusts of  
the said indenture of settlement, your orator hath therefore with the  
consent and approbation of your oratrix C. G. H. his wife, caused  
applications to be made to the said E. F. A. F. E. C. and J. D. re-  
spectively, the trustees in whom the said term of 500 years is now  
vested, and duly required them to take proper measures for raising  
the said sum of £— and the interest due for the same, or at least  
to procure the interest of the said sum of £— to be raised to 5 per  
cent. per annum and to be regularly paid, in which case your orator  
would have been satisfied, and hath offered to let the said money re-  
main upon the said original security. And your orator and oratrixes  
hoped that such requests would have been complied with as in justice  
and equity ought to have been the case. BUT NOW SO IT IS MAY  
IT PLEASE YOUR LORDSHIP THAT THE SAID A. F. E. F. E. C. and J. D. in  
concert with the said T. now lord F. who is an infant under the age  
of twenty-one years, have refused and now refuse to take any mea-  
sures for raising the said sum of £— and the arrears of interest due  
thereon, or for procuring the interest of the said money to be raised  
to 5 per cent. per annum. And the said defendants allege that they  
cannot safely proceed in raising the said money or raising the said in-  
terest by reason of the infancy of the said defendant lord F. ; and

sometimes they allege that the said money cannot be raised by means of the said term of 500 years, by reason that the trusts of the said term of 99 years are not all as yet fully performed. Whereas your orator charges that the said term of 99 years ought not to be considered as an impediment to raising the said sum of £——, inasmuch as the said term of 500 years is of sufficient value to raise the said sum of £—— in case the same were sold expressly subject to the said term of 99 years, and the same ought to be done, or else the equity of redemption of the said T. lord F. in the premises ought to be foreclosed for the remainder of the said term of 500 years for the benefit of the persons interested in the said sum of £——; but the said trustees as well as the said T. lord F. make various objections thereto. To THE END therefore that the said defendants A. F. E. F. E. C. and J. D. may upon their several and respective corporal oaths, and that the said T. lord F. may upon his attestation upon honor, full true perfect and distinct answer make, &c. [*Proceed as in form VI. p. 5, and interrogate to the statements and charges.*]

that the money cannot be raised on account of the trusts of a prior subsisting term.

Charge that the prior term is no impediment.

That a sale ought to be made, or the equity of redemption foreclosed.

[\*317]

And that an account may be taken by and under the direction and decree of this honorable court, of the principal and interest due and owing on the aforesaid security of the premises comprised in the said term of 500 years; and that what shall be found due upon the taking of such account may be paid by the said defendant T. lord F. to the said other defendants upon the trusts of the said settlement, and by a short time to be appointed for that purpose, or in default thereof that the said defendant T. lord F. and all persons entitled to redeem the said premises by virtue of the said indenture of the —— day of —— may be debarred and foreclosed of and from all right and equity of redemption of and in the said premises comprised in the said term of 500 years; Or that what shall be found coming upon taking the aforesaid account, may be raised by sale of a sufficient part of the said premises comprised in the said term of 500 years, and that all proper parties may join in such sale; and that such money when raised may be paid to the said defendants the trustees upon the trusts of the said settlement and that the said trustees may be directed to pay to your orator what shall appear to be coming for arrears of interest of the said sum of £—— out of the said money when paid to them as aforesaid. And that your orator and oratrixes may have such further or other relief in the premises as to your lordship shall seem meet and this case may require. May it please, &c. [*see forms No. 1 and 3, p. 6.*]

Prayer.

R. S.

*Pray subpoena against E. F. A. F.  
E. C. and J. D. and letter missive  
to T. lord F.*

20. BILLS FOR REDEMPTION.(1)<sup>c</sup>

CIX. *Bill by the heir at law of the mortgagors for redemption of freehold lands.*

To, &c.

That plain- Humbly complained sheweth unto your lordship your orator J. G.  
tiff's deceased of, &c. That J. G. the elder late of, &c. but now deceased, and E.

(1) Upon a bill to redeem, a *prima facie* title is sufficient; and an issue will not be directed though the title is complicated if uncontradicted; *Pym v. Bowreman*, in note (a) 3 Swanst. 241; but a trustee in receipt of the rents of an old mortgaged estate under an old conveyance of the equity of redemption upon trust to sell and pay off certain debts which had been long since satisfied, was held not entitled to redeem the mortgage; *James v. Biou*; *Owen v. Flack*, 2 Sim. & Stu. 600.

On a bill to redeem, the person having the legal estate must be before the court, for otherwise the mortgagor cannot have complete reconveyance; *Wood v. Williams*, cited 2 Madd. Ch. Pr. 191.

A second mortgagee, on a bill to redeem a prior mortgage must make the heir of the mortgagor a party; *Palk v. Lord Clinton*, 12 Ves. 48, 2d edit.

Where a mortgagee has been in possession twenty years, without any impediment in the mortgagor to assert his title, such as imprisonment, infancy, coverture, or being beyond sea, (where it is not by having absconded) or if such impediment has been removed ten years, it is a bar to a redemption, see 1 Madd. Ch. Pr. 519; and the cases referred to in note (a), *ibid.*; see also *Harrison v. Hollins*, 1 Sim. & Stu. 632; *Prise v. Cooper*, *ibid.* 347, and *Reeve v. Hicks*, 2 Sim. & Stu. 403, in which last two cases the mortgages had been made by husband and wife.

A mortgagee is always considered as *prima facie* entitled to costs, unless there be some circumstance of positive misconduct; see *Lomas v. Hide*, 2 Vern. 185; *Ramsden v. Langley*, *ibid.* 536; *Gammon v. Stone*, 1 Ves. 339; — *v. Trecothick*, 2 Ves. & B. 181; but the principle does not extend to a case where a solicitor had become an incumbrancer with regard to law expenses, taking a bond and judgment for his bill; *Detillin v. Gale*, 7 Ves. 583, 2d edit. and the cases referred to in the notes.

A mortgagor filing a bill to redeem must pay the costs of persons claiming under the mortgagee, (e. g. trustees and cestui que trusts,) made necessary parties by this act; *Wetherell v. Collins*, 3 Madd. Rep. 255.

<sup>c</sup> On a bill to redeem land alleged to be mortgaged, the question whether the conveyance was a mortgage or not, is to be decided by the rules of the common law; *Bodwell v. Webster*, 13 Pick. 411; and redemption will be allowed, notwithstanding the lapse of time, where acts have been done, or solemn acknowledgments made, within the period, recognising the title as a mere mortgage; *Dexter v. Arnold*, 3 Sumner, 152; and it seems that parol evidence is inadmissible to show that the mortgagor has relinquished his right to redeem. *Scott v. McFarland*, 13 Mass. 309. Redemption will not be allowed before the time specified in a mortgage, even on tender of the principal of the debt, with interest to the stipulated time of payment, and costs. *Abbe v. Goodwin*, 7 Conn. 377.

There can be no redemption without an allegation of payment, or of a tender of the mortgage debt and interest. *Saunders v. Frost*, 5 Pick. 259; *Bank of South Carolina v. Rose*, 1 Strobb. Eq. 257; *Hoopes v. Bailey*, 28 Miss. 328. But a bill for redemption, which set forth a liquidation by the parties, of the amount due, and a tender and refusal thereof, was held not to be defective for want of an offer to pay what should be found due on account. *Barton v. May*, 3 Sandf. Ch. R. 450. The holder of an equity of redemption, who seeks to redeem after a sale, must pay the full amount of the mortgage, though the land sold for less. *Bradley v. Snyder*, 14 Ill. 263. Payment may be made or tendered after the day named in the deed. *Rogan v. Walker*, 1 Wisconsin, 527. In fact, any attempt to limit or fetter the right to redeem, will be held void. *Robinson v. Fareilly*, 10 Ala. 472; *Henry v. Davis*, 7 Johns. Ch. 40; *Clark v. Henry*, 2 Cowen, 324; *Wrights v. Bates*, 13 Verm. 341; *Dougherty v.*



\*his wife now also deceased, the late father and mother of your orator were in the right of the said E. seised in fee-simple of or otherwise well entitled to two freehold fields, &c. And your orator further sheweth that the said J. G. the elder, and E. his wife, in or about the year — made some conveyance and assignment of the said premises unto W. B. of, &c. the defendant hereinafter named by way of mortgage for securing the repayment of a certain sum of money with interest then advanced to the said J. G. by W. B. or by J. B. then of, &c. on the part of and as the agent of the said W. B. And your orator further sheweth unto your lordship that the said W. B. upon or soon after the making of the said security, entered into the possession of the said mortgaged premises or into the receipt of the rents and profits thereof, and hath ever since continued in such possession and receipt, and the said W. B. or the said J. B. on his behalf also possessed himself of all the title-deeds relating to the said premises. And your orator further sheweth that the said J. G. the elder departed this life in or about the year —, and that the said E. G. having survived her said husband departed this

parents were, in right of his mother, seised in fee, and executed a mortgage to the defendant.

That defendant took possession of the premises.

Death of plaintiff's parents, and that plaintiff be-

*Colgan*, 6 Gill & J. 275. If several are interested in the equity of redemption, and only one is willing to redeem, he must pay the whole mortgage debt. *Gibson v. Crehore*, 5 Pick. 146; *Taylor v. Porter*, 7 Mass. 355; *Smith v. Kelley*, 27 Maine, 237. Such a tender must be absolute; where the plaintiff offered to pay if the defendant "would re-assign and transfer" to him, it was held insufficient; *Wendell v. New Hampshire Bank*, 9 N. H. 404; and not only the original consideration, but subsequent advances made by the mortgagee, must be tendered; *Ogle v. Ship*, 1 A. K. Marsh. 287; nor can the mortgagor insist upon a release. *Loring v. Cook*, 3 Pick. 48. The bill need not allege an indebtedness for which it was given, and if alleged, it need not be proved. *Day v. Perkins*, 2 Sandf. Ch. R. 359.

The plaintiff must be entitled to the legal estate of the mortgagor, or must claim a subsisting interest under him. *Grant v. Duane*, 9 Johns. 591; *Purvis v. Brown*, 4 Ired. Eq. 413. The equity of redemption is inherent in the lands, and binds persons coming in, in the past, as well as in the present. *Benzein v. Bennett*, 1 Dev. Ch. 144. If there is a merely technical variance between the mortgage set forth in the bill, and that produced, it will be disregarded. *Radley v. Chopin*, 11 Paige, 245. An allegation that the mortgagor was seised in fee simple of the land, is a sufficient allegation that he was in possession. *Holman v. Bank of Norfolk*, 12 Ala. 369. In Indiana, it is required by statute, that a bill to foreclose a mortgage shall state whether any and what proceedings have been had at law for the recovery of the debt; the omission of such statement is fatal. *McMullen v. Furnoss*, 1 Smith, 73. A bill by a subsequent mortgagee, making a prior mortgagee a party, may pray a sale of the interest mortgaged, subject to the incumbrance of the prior mortgage; or that he may be permitted to redeem the prior mortgage, and have the premises sold to pay such redemption-money and his own mortgage; or that the mortgaged premises may be sold, if the prior mortgagee consents thereto, and the mortgages paid out of the proceeds, according to priority. *Gihon v. Belleville White Lead Company*, 3 Halst. Ch. R. 531. If the mortgage was given for indemnity, it should be alleged that the mortgagee had been compelled to pay money, or been otherwise damaged; *Lewis v. Richey*, 5 Ind. 152; and until such has been the case, cannot be foreclosed. *Francis v. Porter*, 7 Ind. 213.

Not only in the case of a formal mortgage, but wherever a deed absolute on its face may be shown to be a security for antecedent advances, or for a loan made at the time, a redemption will be decreed on repayment of the amount lent, where the rights of *bonâ fide* purchasers, or of creditors without notice have not intervened. *Wallon v. Crowley*, 14 Wend. 63; *Jaques v. Weeks*, 7 Watts, 261; *Cornell v. Pierson*, 4 Halst. Ch. 478; *Parrington v. Pierce*, 38 Maine, 447; *Eldredge v. Jenkins*, 3 Story, 181; *Cole v. Ballard*, 10 Harris, 431; *Clark v. Henry*, 2 Cowen, 324; *Breckenridge v. Hull*, 1 Robinson, 148; *Harrison v. Lemon*, 3 Blackford, 51; *Müller v. Thomas*, 14 Illinois, 428. Whatever facts are alleged to exist, *dehors* the face of the deed, whereby the conveyance became defeasible in its character, and an equity of redemption was created, should be set forth by apt statements in the bill.

came entitled  
as heir at law  
to his mother.

That defend-  
ant made  
small pay-  
ments to the  
plaintiff's pa-  
rents out of  
the rents, and  
that the mort-  
gage has been  
satisfied.

Applications  
to the defend-  
ant.

[ \*319 ]

life on or about, &c. intestate, and without having made after the death of her said husband any conveyance or disposition of such right and interest as she retained at his death in the said premises, leaving your orator her eldest son and heir at law, who thereupon became entitled to the equity of redemption of the said mortgaged premises. And your orator further sheweth unto your lordship that the said W. B. from time to time made some small payments to the said J. G. the elder in his life-time, and after his death to the said E. G. out of the rents and profits of the said premises; and the said W. B. applied the greater part of such rents and profits to his own use, and by means thereof the said W. B. hath been more than repaid the principal and interest due to him on the security of the said premises. And your orator hath frequently applied to the said W. B. and requested him to come to an account for the rents and profits of the said premises so received by him, and to pay over to your orator what he should appear to have so received beyond the \*amount of the principal and interest due to him, and to deliver up the possession of the said mortgaged premises; and your orator well hoped that the said defendant would have complied with such requests as in justice and equity he ought to have done, but that the said W. B. acting in concert with divers persons unknown to your orator, refuses to comply therewith. To THE END therefore that, &c. [see form VI. p. 5; and the note at the end of the prayer, postea.]

And that the said defendant may answer the premises; and that an account may be taken of what if anything is due to the said defendant for principal and interest on the said mortgage, and that an account may also be taken of the rents and profits of the said mortgaged premises which have been possessed or received by the said defendant, or by any other person or persons by his order or for his use, or which without his wilful default or neglect might have been received; and that if it shall appear that the said rents and profits have been more than sufficient to satisfy the principal and interest of the said mortgage, then that the residue thereof may be paid over to your orator; and that your orator may be permitted to redeem the said premises, your orator being ready and willing and hereby offering to pay what if anything shall appear to remain due in respect to the principal and interest on the said mortgage; and that the said defendant may be decreed to deliver up possession of the said mortgaged premises to your orator or to such person as he shall direct free from all incumbrances made by him or any person claiming under him, and may deliver over to your orator all deeds and writings in his custody or power relating to the said mortgaged premises. [And for further relief, see form VIII. p. 5.] May it please, &c. [see form No. 1, p. 6.]

J. L.

*Pray subpoena against W. B.*

*Note.*—This bill was filed by the heir at law conceiving that some undue influence had been resorted to by the defendant in obtaining possession of the estate, and therefore the object of the bill is to discover the defendant's title, and it is framed in the shape of a bill of

redemption, as for a mere bill of discovery it would have been liable to a demurrer; and to avoid that fate, the interrogating part must be confined to the mere facts stated, and not ask for the defendant's title.

\*CX. *Bill by the devisee(2) of an estate which had been mortgaged by the testator for a term of years, against his executor who was also his heir at law, and had taken an assignment from the mortgagee, and got into possession of the estate. The devisee being tenant in tail, a recovery was suffered by her and her husband and the estate limited to him in fee. The bill prays for an account of the principal and interest due on the mortgage, and of what is due from the defendant in respect of part of the mortgaged premises in his own occupation, and of other parts let to tenants, and that if the mortgage was paid out of the testator's personal estate, that the amount of the moneys to be found due from the defendant may be paid to plaintiff; but if not, then praying for an account of the testator's personal estate, and that the amount to be found due from the defendant in respect of rent may be set off against the amount to be found due on the mortgage-security—that the personal estate may be applied in aid, but if insufficient that plaintiff may redeem, that defendant may assign the premises to plaintiff, and deliver up the title-deeds, and also the possession of the premises.* [ \*320 ]

In the Exchequer.

To, &c.

Humbly complaining show unto your honors your orator and oratrix T. R. of, &c. and H. his wife, late H. C. spinster, daughter of I. C. the elder, late of — deceased, debtors, &c. [see form No. 2, p. 2.] That the said I. C. being seised to him and his heirs or otherwise well entitled for some good and sufficient estate of inheritance of in or to certain messuages or tenements situate, &c. with their appurtenances, duly made and executed a certain indenture bearing date —, and thereby in consideration of the sum of £—— or some such sum paid to him by S. S. of, &c. demised or otherwise conveyed to the said S. S. her executors administrators and assigns the said messuages, &c. for the term of — years, or some other number of years, but subject to a proviso or condition therein contained for redemption of the same on payment by the said I. C. his heirs or assigns of the said sum of £—— or such other sum so lent to him as aforesaid unto the said S. S. her executors administrators or assigns with such interest for the same at such time and in such manner as is therein mentioned.

That the said mortgage money was not paid at the day or time stipulated by the said indenture for payment thereof, but was con-

Mortgage by  
demise to S.  
S.

Mortgage-mo-  
ney not paid.

(2) To a bill by a devisee to redeem, the heir need not be a party unless the devisee claims to have the will established; *Lewis v. Nungle*, 2 Ves. sen. 430.

Arrears of interest paid to the mortgagee.

Death of mortgagor.

His will devising the mortgaged estate to his daughter, plaintiff H. R. in tail.

[ \*321 ]

Probate by the executor who possessed all the personal estate.

Title of plaintiffs.

A recovery suffered by them.

Mortgage-money paid out of the personal estate.

Assignment by the mortgagee to the executor who was the testator's heir at law and received the rents.

Applications to the defendant.

continued at interest, and there being then — years interest or thereabouts due thereon the said I. C. in or about — actually paid the same to her the said S. S.

That some time afterwards and while the said principal sum of £—— remained unpaid (that is to say) on or about — the said I. C. died, having previously duly made and published his last will and testament in writing bearing date — and duly executed and attested as by law required for passing real estates, and thereby amongst other things gave and devised to your oratrix his daughter [*the aforesaid mortgaged premises in tail,*] and appointed M. C. executor thereof.

That upon or soon after the decease of the said I. C. the testator, the said M. C. duly proved his said will in the proper Ecclesiastical Court, and possessed himself of all the personal estate and effects of the said testator to an amount much more than sufficient to pay all his just debts, funeral and testamentary expenses, and that your orator and oratrix in right of your oratrix became entitled under the said will to the said messuages, &c. subject to the aforesaid mortgage, and they have since suffered a common recovery thereof, and declared the uses of the said recovery to and in trust for your orator and oratrix and his heirs, whereby he is become entitled to the equity of redemption of the said premises.

That shortly after the decease of the said I. C., he the said M. C. having by means of the said personal estate and effects of the said testator or otherwise paid to the said S. S. what was due to her for principal and interest upon her said mortgage, privately took an assignment thereof from her, and by means thereof, as being the only son and heir at law of his said late father the said testator, prevailed upon the tenants of the said messuages, &c. to pay him the rent which became due for the same respectively after the said assignment and being then in the possession of the residue of the said premises as tenant to his said late father continued in the possession thereof, and hath ever since continued in the receipt of the rents and profits of the said other premises.

That being so entitled to the equity of redemption of the said mortgaged premises as aforesaid, *plaintiffs* have frequently applied to the said M. C. and desired him to inform *plaintiffs* what had been paid by him to the said S. S. in discharge of the principal or interest on the said mortgage, and how much was actually and *bona fide* due thereon at the time the said mortgage was so assigned to him, and what sum or sums of money had come to his hands on account of the rents and profits of the said messuages, &c. and what sum of money has become due to *plaintiff* since the death of the said testator, for or in respect of the premises so possessed or occupied by the said defendant as aforesaid, in order to ascertain what after all just and reasonable allowances, remained due for principal and interest on the said mortgage, so as to enable *plaintiff* T. R. to redeem the same in case it should appear that the same had not been satisfied by or out of the personal estate and effects of the said I. C. the said testator. And *plaintiffs* hoped that the said M. C. would have complied with such their reasonable requests, and in case it should

appear that the said mortgage had been so satisfied by him out of such personal estate, or if otherwise, that upon *plaintiff* T. R. paying to him what remained due for principal and interest on the said mortgage after all just and reasonable allowances, he would have assigned the said mortgage to or in trust for *plaintiff* T. R. or his heirs in such manner as should be reasonable or necessary in that behalf, and that \*he would have delivered up to *plaintiff* T. R. all the title-deeds or writings in his custody or power relating to the said mortgaged premises, and would have let *plaintiff* into the possession thereof; and especially as *plaintiff* T. R. frequently offered to pay unto the said M. C. what should appear to be so due on the said mortgage as aforesaid together with — months' interest more than what was so due, as a compensation or a satisfaction for his not having had the usual notice of *plaintiff's* intention to redeem the said premises. BUT NOW SO IT IS, &c. [See form IV. p. 5.]

[ \*322 ]

*Pretence* that the said testator never made and executed his last will and testament of such date purport and effect as is hereinbefore mentioned and set forth, but the said defendant at other times admitting the contrary thereof to be true, pretends that the said testator was not of sound and disposing mind when he made and executed the same, and that such will was not duly executed and attested so as to pass freehold estates of inheritance, and that the said mortgaged premises descended to him the said defendant as the said testator's heir at law.

Pretence that no will was ever made, or if made testator was of unsound mind, and that same was not duly executed, and the mortgaged premises descended to the defendant.  
Charge the contrary.

*Charge the contrary* of such pretences to be the truth, and that the said testator did when of sound and disposing mind duly make and execute his last will and testament in writing of such date, purport and effect as is hereinbefore mentioned and set forth, and that the same was duly executed and attested so as to pass real estates.

*Pretence* that the defendant hath some estate or interest in the premises other than by and under the said will, or any assignment of the said mortgage from the said S. S. but what estate or interest in particular he refuses to discover.

Pretence of some interest in the premises, but what he refuses to discover.

*Charge* that the defendant had not at the time of the death of the said testator or since any right or interest whatsoever in or to the said mortgaged premises or any part thereof, save by or under the said will and some assignment of the said mortgage from the said S. S., and which assignment though now in the custody or power of the said defendant, he refuses to discover and produce to *plaintiffs* or either of them, with a view of continuing in the possession and receipt of the rents and profits of the said mortgaged premises to the prejudice of *plaintiffs*. And the said M. C. will at times acknowledge that he paid to the said S. S. what was due to her for principal and interest on the said mortgage, and that he took an assignment thereof to or in trust for himself, but then he pretends that the same was so paid with his own proper money, and the rather as he pretends that the personal estate and effects of the said testator were inadequate to satisfy and discharge the money due for principal and interest on the said mortgage, or at least that very little of such personal estate hath ever come to his hands or been received by him.

Charge that defendant never had any interest save under the will, and some assignment of the mortgage.  
Defendant admits that he has paid off the mortgage and taken an assignment thereof.

Pretending that the same was paid with his own money, and that

the personal estate was insufficient.

Charge the contrary.

Charge as to books, &c.

[ \*323 ]

That if the mortgage was paid out of the personalty, it ought to be assigned to plaintiffs.

Offer made to the defendant to pay off the mortgage.

Application to the defendant personally, in order to ascertain the amount due on the mortgage.

A tender made to the defendant.

Prayer.

*Charge* that the personal estate was of very considerable amount and value, and that the whole or the greatest part thereof hath come to the hands of him the said M. C. or to the hands of some other person in trust for him or for his use. And although the said defendant hath in his custody or power some book or books of account, entries, memorandums or writings tending to show or ascertain the particulars and value of such personal estate and effects, and \*what part thereof hath come to the hands or to the use of him the said defendant as aforesaid, or relating to such personal estate and effects or some part thereof, yet he refuses to produce or discover the same, insisting that *plaintiffs* have no right whatsoever to be satisfied in or touching the premises.

*Insist* that in case it shall appear that the said mortgage was satisfied as aforesaid by or out of the personal estate and effects of the said testator, the same ought to be assigned to or in trust for *plaintiffs*, or in case it hath not been so satisfied, a sufficient part of the said testator's personal estate ought to be applied in satisfaction thereof.

*Charge* that *plaintiff* T. R. has been so far from refusing to redeem the said mortgage that he hath at all events and at different times offered to pay what should appear to be due for principal and interest on the said mortgage without any regard to his said claim on the said personal estate and effects as aforesaid in respect thereof but without prejudice thereto.

*Charge* that on — *plaintiff* T. R. called on the said defendant at his house in K. aforesaid, and desired to know how much was then due for principal and interest on the said mortgage, and upon his refusing to disclose the same, *plaintiff* T. R. actually tendered to him the sum of £—— in satisfaction of what was then due to him for principal and interest on the said mortgage together with — months' interest on the said principal sum more than what was then due, as a compensation and satisfaction to the said defendant for his not having had the usual notice of plaintiffs' intentions to redeem the said mortgaged premises, offering at the same time to pay any further sum to the said defendant in case he could make it appear that the said sum of — was not sufficient for answering the purposes aforesaid, but which in fact it was and which the said defendant then admitted it to be, but nevertheless he repeatedly refused to accept the same. All which actings, &c. [See form VI. p. 5, *interrogating to the stating and charging parts.*]

And that an account may be taken of what was due for principal and interest on the said mortgage at the time the said assignment thereof was so taken by the said defendant as aforesaid; and that an account may be also taken of what hath become due or ought to be paid from or by the said defendant for or in respect of the rent for the premises so occupied by him since the death of the said testator, and also of all and every the sum or sums of money which since the death of the said testator have been received by the said defendant or by his order or for his use, for or an account of the residue of the said mortgaged premises; and in case it shall appear that the said mortgage has been satisfied by the said defendant, by and out of the

personal estate of the said testator, then that what shall appear to be coming for or in respect of the rents and profits as aforesaid after all just and reasonable allowances, may be paid to *plaintiff* T. R. And in case it shall appear that the said mortgage was paid and satisfied by the proper money of the said defendant, then that an account may be taken of the personal estate of the said testator, and of what is due for principal and interest on the said mortgage as aforesaid; and that what shall appear to be so \*coming on account of the rents and profits after all just allowances, may in such case be set off in part satisfaction or discharge of what shall appear to be due for principal and interest on the said mortgage, and in such case that a sufficient part of testator's personal estate may be applied in discharge of the said mortgage money and interest; and if the same shall not be sufficient, then that upon *plaintiffs'* paying to the said defendant what shall appear to be then remaining due for principal and interest, that the said defendant may be decreed to assign or convey the said mortgaged premises for the residue of the said term therein granted, to or in trust for *plaintiffs* in such manner as this court shall direct, and may also deliver up to *plaintiffs* all the title-deeds evidences and writings whatsoever in his custody or power relating to or concerning the said mortgaged premises or any part thereof, and that *plaintiff* may also be let into the possession thereof. [And for further relief, see form VIII. p. 5.] May it please, &c. [see form No. 1, p. 6.]

[ \*324 ]

J. L.

CXI. *Bill by the customary heir of the mortgagor against the mortgagee for redemption of copyhold premises, and an account of the rents and profits received by the defendant.*

To, &amp;c.

Humbly complaining sheweth unto your lordship your orator T. M. of, &c. That E. M. late of, &c. widow, and now deceased, the mother of your orator, was in and before the month of —, seised to her and her heirs according to the custom of the manor of B. in the county of S. of and in a certain copyhold or customary messuage or tenement and premises with the appurtenances holden of the said manor and lying in, &c. And your orator further sheweth unto your lordship that the said E. M. having occasion to borrow a sum of money, did on or about — apply to I. C. M. of, &c. the defendant hereinafter named, to advance and lend her the sum of £— upon mortgage of the said copyhold messuage or tenement and premises, and the said I. C. M. having consented so to do your orator's said late mother duly surrendered the said copyhold or customary messuage or tenement according to the custom of the said manor, to the use of the said I. C. M. and his heirs, upon condition nevertheless that the said surrender should be void upon repayment by the said E. M. her heirs executors administrators or

That plaintiff's mother was seised of a copyhold estate.

Applications by her for a loan.

Conditional surrender made as a security.

assigns to the said I. C. M. his executors administrators or assigns of the said sum of £—— with interest for the same after the rate of £5 per cent. on —— . And your orator further sheweth that the said sum of £—— not being repaid within the time mentioned in the said condition, the said I. C. M. was on or about —— admitted tenant to the said premises according to the custom of the said manor, to hold to him the said I. C. M. his heirs and assigns, subject \*nevertheless to the equity of redemption thereof by the said E. M. her heirs or assigns, As in and by the said surrender and admission reference being thereunto respectively had will appear. And your orator further sheweth unto your lordship that the said I. C. M. upon his advancing the said sum of £—— to the said E. M. entered into possession of the said mortgaged premises or into the receipt of the rents and profits thereof; and the said I. C. M. hath ever since been and now is in such possession or receipt, and by means thereof and of various sums of money from time to time paid to him by the said E. M., the said I. C. M. hath been greatly more than repaid the said principal sum of £—— and all interest thereon. And your orator further sheweth unto your lordship that the said E. M. departed this life intestate on or about —— leaving your orator her youngest son and heir at law and heir according to the custom of the said manor of B., and thereupon your orator became entitled to the equity of redemption of the said mortgaged premises. And your orator further sheweth unto your lordship that he hath by himself and his agents repeatedly applied to the said I. C. M. and requested him to come to an account with your orator for the moneys from time to time paid to him in discharge of the said mortgage-money by the said E. M. in her life-time, and for the rents and profits of the said mortgaged premises received by him in the life-time of the said E. M. and since her death, and to pay over to your orator what upon such account he shall appear to have received beyond the said principal sum of £—— and interest thereon, and to surrender the said copyhold premises to the use of your orator and his heirs. And your orator well hoped that the said I. C. M. would have complied with such your orator's reasonable requests as in justice and equity he ought to have done. BUT NOW SO IT IS, &c. [see form IV. p. 5.] And the said defendant pretends that the moneys which were paid to him on account of the said mortgage by the said E. M. in her life-time and the rents and profits of the said mortgaged premises received by him, or which but for his wilful default or neglect he might have received since he first entered into the possession of the said premises as aforesaid, have not been more than sufficient to satisfy and keep down the interest from time to time accruing due on the said principal sum of £—— . Whereas your orator charges the contrary thereof to be the truth, and so it would appear if the said defendant would set forth as he ought to do a full true and particular account of all and every the moneys received by him in or toward satisfaction of the said mortgage-money and when and from whom received; and also a full true and particular account of the rents and profits of the said premises received by him since he first entered into possession of the said premises as aforesaid, or

Mortgage-money not paid.  
Mortgagee admitted.

[ \*325 ]

Mortgagee took possession upon advancing the money.

That mortgagee has been repaid all principal and interest.  
Death of plaintiff's mother.

applications to defendant.

Pretence that the moneys received have not been more than sufficient to keep down the interest.

Charge the contrary.



which but for his wilful default and neglect might have been received by him, and when and from whom and on what account respectively received. And your orator further charges that in order that the said defendant might have no pretence to keep from your orator the possession of the said mortgaged premises, your orator in the month of — last, tendered to him the sum of £—— subject to a future account as to the receipts of the said defendants by the means aforesaid. \*And your orator at the same time earnestly desired the said defendant to furnish your orator with the particulars of the sums received by him the said defendant by the rents and profits of the said premises, or otherwise in or towards satisfaction of the said mortgage-moneys, and offered to pay immediately any balance that should be due beyond the said sum of £—— if any such there were; but the said defendant refused to accept the said sum of £—— or to deliver to your orator any account of his receipts by the rents and profits of the said premises or otherwise, and told your orator that he might file a bill in equity against him as soon as he pleased. All which actings, &c. [*see form VI. p. 5, interrogating to the stating and charging parts.*]

Charge of a tender made to the defendant, and refusal by him to accept the same.

[ \*326 ]

And that the said defendant may answer the premises; and that an account may be taken of the rents and profits of the said mortgaged premises which have been received by the said defendant since his possession thereof as aforesaid, or which but for his wilful default or neglect might have been so received; and also an account of all other the sums which have been received by the said defendant in or towards satisfaction of the said mortgage-money; and that an account may also be taken of the principal and interest which have accrued due on the said mortgage; and in case it shall appear that the rents and profits and other receipts of the said defendant exceed the amount of the said principal money and interest, then that the said defendant may be directed to pay to your orator such excess, your orator being ready and willing and hereby offering to pay to the said defendant what if anything shall on the balance of the said accounts appear to remain due on such mortgage to the said defendant; and that the said defendant may surrender the said mortgaged premises unto your orator or such other person as he shall appoint, free and clear of all incumbrances done by him or any person claiming by from or under him, and may deliver up to your orator all title-deeds or writings in his custody or power relating to the said mortgaged premises. [*And for further relief, see form VIII. p. 5.*] May it please, &c. [*see form No. 1, p. 6.*]

Prayer.

CXII. *Bill to have goods re-delivered which have been deposited as a security for money lent.*

Humbly complaining sheweth unto your lordship your orator A. S. of, &c. that your orator having occasion for a sum of money for the purposes of his business made application to P. S. of, &c. the defendant hereinafter named to lend him the same, and thereupon the said

Application for a loan and advancement of money on

the security of P. S. on or about — advanced and lent to your orator the goods. sum of £——, and in order to secure the repayment thereof with

[ \*327 ]

A bill of sale delivered to defendant.

Agreement that plaintiff should be at liberty to redeem the goods.

Applications to the defendants.

Prayer.

the said defendant a bill of sale of the said goods so deposited with him, but it was not meant and intended thereby either by your orator or the said defendant that the said transaction should amount to an absolute sale of the said goods to the said defendant, but it was expressly agreed between your orator and the said defendant, that your orator should nevertheless be at liberty to redeem the same. And your orator further sheweth that being desirous to redeem the said goods, he hath repeatedly applied to the said P. S. and hath offered to repay him the said sum of £—— with lawful interest thereon; on having the said goods re-delivered to him, with which just and reasonable requests your orator well hoped that the said P. S. would have complied as in justice and equity he ought to have done. BUT NOW SO IT IS, &c. [see form IV. p. 5.] TO THE END, &c. [see form VI. p. 5, *interrogating to the statements.*]

And that the said defendant may answer the premises; and that an account may be taken of what is due to the said defendant for principal and interest in respect of the said loan of £——, and that upon payment thereof by your orator the said defendant may be decreed to deliver over to your orator the said goods so deposited with him as aforesaid. [And for further relief, see form VIII. p. 5.] May it please, &c. [see form No. 1, p. 6.]

J. L.

CXIII. *Prayer of a bill filed by a devisee of a moiety of an estate in the island of M. against the representatives of the mortgagees for a redemption, account, and re-conveyance, with the Interrogatory for a discovery as to the rents and profits received by the defendants.*

Interrogatory.

And that the said defendants J. H. and A. his wife, T. T. and W. B. may set forth a full true and particular account of all and every sum and sums of money which have been received by or come to the hands of them or any or either of them, or the said W. H. R. B. and W. B. deceased during their respective life-time or any or either of them, or any other person or persons by their or any or either of their order, or for their or any or either of their use, for or in respect of the rents and profits of the said mortgaged premises and every part thereof, and when and by whom with all the particulars thereof, and what (if any thing) now remains due to them the said defendants J. H. and A. his wife, T. T. and W. B. as such representatives as aforesaid for the principal and interest and how much (if any thing) hath been overpaid thereby.

Prayer.

And that *plaintiff* may be at liberty to redeem the said mortgaged premises; and that an account may be taken by and under the di-

rection and decree of this honorable court of the rents and profits of the aforesaid mortgaged premises and every part thereof received by the said W. H. R. B. and W. B. deceased during their life-time, and by the said defendants J. H. and A. his wife, T. T. and W. B. \*since their decease or any one of them, or by any person or persons by their or any or either of their order or for their or any or either of their use, or which without their wilful neglect or default might have been received by them the said mortgagees or their said representatives or any or either of them since they respectively entered into possession of the said premises; and that an account may also be taken of the principal money and interest secured by the said indentures of mortgage, and what (if any thing) now remains due thereon; and upon payment thereof that *plaintiff* may redeem the same premises; and that in case the said W. H. R. B. and W. B. deceased, and the said defendants J. H. and A. his wife, T. T. and W. B. shall appear to have received more than the said mortgage-money and interest thereon at the rate of 6l. per cent. per annum, then that the said defendants J. H. and A. his wife, T. T. and W. B. as the representatives of the said W. H. R. B. and W. B. deceased, may be decreed to pay same to *plaintiff* and defendant E. M. (*who was entitled to the other moiety*); and that the said defendants J. H. and A. his wife, J. F. and H. his wife, J. P. B. and A. his wife, T. T. W. B. R. B. and D. B. may be decreed to re-convey and re-assign the said mortgaged premises to *plaintiff* and the said defendant E. M. as tenants in common free from all mesne charges and incumbrances, and to deliver up possession thereof to *plaintiff* and defendant E. M. together with all title-deeds, papers and writings in their or any or either of their custody, possession or power relating to or concerning the said mortgaged premises. [*And for further relief.*]

[ \*328 ]

CXIV. Charging part in a bill for redemption filed against an assignee of a mortgage security.

Prayer for an account of the money paid by the defendant on the assignment being made to him, of the interest since accrued due, and of the rents and profits received by the defendant; that the amount of rents may be set off against what shall be found due in respect of principal money and interest, and the balance paid over to plaintiff; or if any thing should be found due to the defendant, then that upon payment to him he may re-convey and deliver up possession of the premises, together with the title-deeds.

And the said defendant J. S. pretends that the rents and profits of the said mortgaged premises during his possession thereof have not been more than sufficient to keep down the interest on the principal sum paid by him since the assignment to him of the said mortgage. Whereas your orator charges the contrary thereof to be the truth, and so it would appear if the said defendant would set forth as he ought to do a full true and perfect rental

Pretence that the rents have not been sufficient to keep down the interest of the mortgage. Charge the

contrary to be true, and that so it would appear from the accounts required.

[ \*329 ]

Charge that the defendant has kept accounts of the rents, and has in other respects acted as mortgagee. That he filed a bill of foreclosure.

Pretence that the equity of redemption was foreclosed.

Charge that if any such decree was made, the same is not binding on plaintiff.

Claims set up by the other defendants.

Prayer.

and particular of all and singular the said mortgaged premises, and by whom the same have been respectively occupied since the possession thereof by the said defendant, and at what yearly and other rent and value, and a full and true account of all and every sum and sums of money received by the said defendant \*or for his use for or in respect of the rents and profits of such premises, and when and from whom and for what in particular the same were so received. And your orator further charges that the said defendant hath from time to time kept accounts of the rents and profits of the said premises as the mortgagee thereof, and hath in other respects long since the said assignment so made to him as aforesaid treated and considered himself as the mortgagee of the said premises, and in particular your orator charges that the said defendant some time since caused a bill for the foreclosure of the equity of redemption of the said mortgage to be filed in some court of equity, to be prepared for that purpose. And the said defendant sometimes pretends that the said equity of redemption was absolutely foreclosed by the decree of some competent court, but the particulars thereof and in what court the said defendant refuses to discover. Whereas your orator charges that if any such decree was made that the same is not binding upon your orator, inasmuch as the said G. A. who was then entitled to the said equity of redemption was not a party thereto. And your orator further charges that the said defendants M. S. J. S. and M. B. claim some right and interest in the premises ; but how they make out the same they respectively refuse to discover.

That an account may be taken of the principal money paid by the said defendant J. S. on the assignment of the said mortgage so made to him as aforesaid, and of the interest which hath since accrued due thereon, and also an account of the rents and profits of the said mortgaged premises which have been possessed or received by the said defendant or by any other person or persons by his order or for his use, or which without his wilful default or neglect might have been received ; and that what shall be coming on account of the said rents and profits may be applied in the first place in payment of the interest, and then in sinking the principal due to the said defendant on the said mortgage, and the residue (if any) paid over to your orator ; and that the said defendant in such case, or if it shall appear that anything is remaining due to the said defendant on the said mortgage then upon payment by your orator of what shall be found due, may be decreed to assign the said mortgaged premises to your orator, or as he shall appoint, free from all incumbrances done by him the said defendant, and may deliver up the possession of the said mortgaged premises to your orator, together with all deeds and writings relating thereto. [*And for general relief.*]

## \*22. BILLS FOR THE APPOINTMENT OF NEW TRUSTEES.(1)

CXIX. *Bill to remove trustees, one refusing to act, and the other a prisoner for debt having applied part of the trust moneys to his own use. Prayer for an account, and for an injunction to restrain them from any further interference;—also for a reference to a Master to appoint new trustees, and for a receiver.*<sup>d</sup>

To, &c.

Humbly complaining show unto your lordship your orator and Deed of as-  
 atrixes J. E. of, &c. and S. his wife, and S. E. the younger, spin- signment of

(1) The court will control a trustee in the exercise of a power to appoint new trustees, although given in the fullest words; therefore trustees parties to a suit, will not be allowed to exercise a power of appointing new trustees without the authority and direction of the court, and a reference to the Master to approve of the persons proposed; *Webb v. Earl of Shaftesbury*, 7 Ves. 480. So where trustees having such power, will not exercise it without coming to the court, there must be a reference to the Master; — *v. Roberts*, 1 Jac. & W. 251. See further 2 Madd. Ch. Pr. 161, 2.

In *Bayley v. Mansell*, 4 Madd. 226, on a bill filed for the appointment of new trustees, a decree was made accordingly and for a conveyance to them, but the court refused to admit a clause in the conveyance to enable the new trustees to appoint others in their stead if it should become necessary, there being no provision in the trust deed for that purpose.

Where personal property is bequeathed to executors as trustees, the probate of the will is an acceptance of the trusts; *Mucklow v. Fuller*, Jac. R. 198; *q. v.* as to the liability of one trustee for the acts of his co-trustee.

Trustees of a charity are never appointed without a reference; but where the fund was very small it was ordered that the Master should appoint the trustees at once, without coming back to the court; *Attorney-General v. Earl of Arran*, 1 Jac. & W. 229.

A trustee seeking the direction and indemnity of the court as to the execution of his trust, is whether plaintiff or defendant, entitled to his costs unless the act required to be done leads to no responsibility, and the motive of the trustee is obviously vexatious; *Curteis v. Chandler*, 6 Madd. 123. See also *Taylor v. Glanville*, 3 Madd. 178; *Mohun v. Mohun*, 1 Swanst. 201. Trustees on applications to the Court of Chancery, generally obtain costs as between attorney and client; *Bea. on Costs*, 157; and see *Fearn v. Young*, 10 Ves. 184, 2d edit.

<sup>d</sup> Where a sole trustee for infants, appointed under a will, dies, and the will does not provide for the appointment of a successor, a court of equity will appoint one. *Duncomb v. Duncomb*, 2 Hen. & M. 11. And where it was shown by the petition, that the *cestui que trust* was prohibited by the laws of the State from coming within its limits, the court substituted for such trustee, a person living in the State where the *cestui que trust* resided. *Ex parte Tunno*, 1 Bailey, Ch. 395. But a court of equity will not appoint a person residing in a foreign jurisdiction, without security for the faithful discharge of his duties; and the sureties must be persons amenable to the jurisdiction of such court. *Ex parte Robert*, 2 Strobb. Eq. 86. Though the proceeding to remove a trustee must be by bill, yet a new trustee may be appointed upon petition. 1 Bailey, 489. If one of several trustees dies, and the others refuse to accept the trust, the trust devolves upon the Court of Chancery, under the revised statutes of New York; and the parties interested may apply to the court to have a receiver appointed to collect the rents until a new trustee is appointed. *McCosker v. Brady*, 1 Barb. Ch. R. 329. In Maryland, the Court of Chancery has no jurisdiction in the appointment and removal of trustees of insolvent debtors, the whole subject, under the statutes, resting with the courts of law. *Powles v. Dilley*, 9 Gill, 222, and 2 Md. Ch. Decis. 119. Where a trustee, appointed by a will, refuses to accept the trust, and a trustee is appointed by a court of equity, he derives his power from

moneys and effects to the defendants as trustees.

That R. P. hath principally acted and applied the moneys to his own use.

[ \*331 ]

Applications to the defendants.

Pretence that the property was inconsiderable and has been duly applied.

Charge the contrary.

Charge that the defendants ought to be removed, and new trustees appointed, and in the mean time a receiver appointed.

Prayer.

ster, the daughter and only child of your orator and oratrix J. E. and S. his wife, That by indenture bearing date —, and made between your orator and oratrix J. E. and S. his wife of the one part, and N. B. of, &c. and R. P. late of, &c. but now a prisoner in his majesty's gaol of — (the defendants hereinafter named) of the other part, after reciting that, &c. [*stating the indenture.*] As by the said indenture to which your orator and oratrixes crave leave to refer when produced will appear. And your orator and oratrixes further show unto your lordship that the said R. P. hath principally acted in the trusts of the said indenture, and hath by virtue thereof from time to time received considerable sums of money and other effects, \*but the said R. P. hath applied only a small part thereof upon the trusts of the said indenture, and hath applied and converted the residue thereof to his own use, and in particular the said R. P. hath within a few months past received a considerable sum from the estate and effects of the said C. E. the whole of which he applied to his own use. And your orator and oratrixes further show that they have by themselves and their agents repeatedly applied to the said R. P. and N. B. for an account of the said trust property received and possessed by them, and of their application thereof. And your orator and oratrixes well hoped that the said defendants would have complied with such their reasonable requests as in justice and equity they ought to have done. BUT NOW SO IT IS, &c. [*see form IV. p. 5.*] And the said defendants pretend that the trust property and effects possessed and received by them were to an inconsiderable amount, and that they have duly applied the same upon the trusts of the aforesaid indenture. Whereas your orator and oratrixes charge the contrary of such pretences to be the truth, and that so it would appear if the said defendants would set forth as they ought to do a full and true account of all and every the said trust property and effects which they have respectively possessed and received, and of their application thereof. And your orator and oratrixes charge that the said R. P. threatens and intends to use other parts of the said trust property and to apply the same to his own use, unless he is restrained therefrom by the injunction of this honorable court. And your orator and oratrixes further charge that he as well as the said N. B. ought to be removed from being trustees under the said indenture, and that some other persons ought to be appointed by this honorable court as such trustees in their place and stead, and that in the meantime some proper person ought to be appointed to receive and collect the said trust property. All which actings, &c. [*see form VI. p. 5, interrogating to the stating and charging parts.*]

And that the said defendants may answer the premises : and that

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the court, and not from the will, and can only execute the trust so far as directed by the court. *Harris v. Rucker*, 13 B. Monroe, 564. Where an application is made to the court for the appointment of a trustee, all persons interested may appear and become parties, and act for their interest. *Bass v. Fountleroy*, 11 Texas, 698. A court of equity cannot substitute new executors as such, for those named by a testator; but when their duties as executors have terminated, and they have become simply trustees, the power conferred by the Revised Statutes of New York upon courts of equity, to compel the resignation of a trustee, and to appoint another in his place, is applicable, and may be exercised. *Leggett v. Hunter*, 25 Barb. (N. Y.) 81.

an account may be taken of all and every the said trust property and effects which have or but for the wilful default or neglect of the said defendants might have been received by them or either of them, or by any other person or persons by their or either of their order, or to their or either of their use; and also an account of their application thereof; and that the said defendants may respectively be decreed to pay what shall appear to be due from them upon such account; and that the said defendants may be removed from being trustees under the said indenture, and that it may be referred to one of the Masters of this honorable court to appoint two other persons to be the trustees under the said indenture in their place and stead; and that in the meantime some proper person may be appointed to receive and collect the said trust estate and effects, and that the said defendants may be restrained by the order and injunction of this honorable court from any further interference therein. [*And for further relief, see form VIII. p. 5.*] May it please, &c. [*see forms No. 1 and 4, p. 6.*]

J. L.

\*CXX. *Bill for the appointment of a new trustee under a marriage settlement, in the room of one desirous to be discharged, there being no such power therein contained.*(2) [ \*332 ]

Humbly complaining show unto your lordship your orators and oratrixes I. M. P. of, &c. and E. his wife, and A. P. and C. P. infants under the age of twenty-one years, by the said I. M. P. their father and next friend, and S. N. M. of, &c. [*the other trustees under the settlement,*] That by certain indentures of lease and release bearing date respectively, &c. the release being of three parts, and made or expressed to be made between, &c. [*stating the indenture of release.*] But the said indenture of release contained no power or authority to appoint a new trustee in the place or stead of either of the said trustees therein named, who should decline to act in the said trusts, or be desirous to be removed therefrom. As in and by the said indentures, &c. And your orators and oratrixes further show unto your lordship that the said intended marriage was soon afterwards had and solemnized between your orator I. M. P. and your oratrix E. P.; and that your orator and oratrix A. P. and C. P. are the only children of the said marriage. And your orators and oratrixes further show that the said defendant I. P. L. declines to act in the trusts of the said indenture, and is desirous to be discharged therefrom, but by reason that no power is reserved in the said indenture for the appointment of a new trustee, your orators and oratrixes are advised that he cannot be discharged from such trusts, nor any new trustee appointed without the aid of this honorable court. To THE END therefore that the said defendant I. P. L.

Indentures of lease and release and settlement.

The marriage duly solemnized.

Defendant desires to be discharged.

may upon his corporal oath, &c. [*Proceed as in form VI. p. 5, and interrogate to the statements.*]

Prayer.

And that the said defendants may answer the premises; and that it may be referred to one of the masters of this honorable court to appoint a new trustee under the said marriage settlement, in the place and stead of the said defendant; and that the said defendant may be directed to join in such instrument or instruments as may be necessary for conveying or releasing the said trust premises to your orator S. N. M. and such new trustee upon the trust of the said settlement; and that thereupon the said defendant may be discharged from the trusts of the said indenture. [*And for further relief, see form VIII. p. 5.*] May it please, &c. [*see form No. 1, p. 6.*]

J. L.

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[ \*333 ] \*CXXI. *Bill by a trustee for the removal of his co-trustee refusing to act under the trusts of a will, and for the appointment of a new trustee in his place.*

Bill states the will, testator's death, and the probate; that the personal estate is insufficient, and that it is therefore necessary to sell the whole or part of the real estate pursuant to the directions of the will. Applications by the *plaintiff* to the defendant, who was named a trustee in the will, to join with *plaintiff* in carrying the trusts of the will into execution, and for that purpose to sell the testator's estates to pay off his debts, and otherwise to act in the trusts reposed in them by the will.

That the defendant refuses to act in the trusts of the will, and therefore *plaintiff* is advised and humbly insists that the said C. H. ought to release and assign all his trust estate and interest in the said premises unto *plaintiff* his co-trustee, or otherwise that a new trustee ought to be appointed in the place of the said C. H., and the said trust estate conveyed unto *plaintiff* and such new trustee upon the trusts mentioned in the said will. But the said C. H. refuses to assign or convey the trust estates and premises or any part thereof, alleging that he cannot do the same with safety without the directions and indemnity of this honorable court. TO THE END therefore that the said C. H. may upon his corporal oath, &c. [*Proceed as in form VI. p. 5, and interrogate to the statements.*]

And that the said defendant C. H. may be discharged from the trusts of the said will, and may release and convey all his interest in the said trust estates and premises, according to the nature thereof, unto *plaintiff* his co-trustee, or that a new trustee may be appointed in the place and stead of the said C. H.; and that the trust estates and premises may be respectively duly conveyed and assigned according to the different natures thereof, unto *plaintiff* and such new trustee and their heirs, upon the trusts mentioned and expressed in the said testator's will, and that all proper parties may be decreed to join



therein. [And for further relief, see form VIII. p. 5.] May it please, &c. [see form No. 1, p. 6.]

J. L.

\*CXXII. *Bill by a surviving trustee, praying to be discharged from the trusts of a will on the ground of obstruction by the husband of cestui que trust, and for the appointment of new trustees, and that plaintiff may be at liberty to retain his costs out of the trust moneys, or that he may be paid the same by the defendant the husband. Praying also for an account of the rents improperly received by the husband, and for an injunction to restrain him from proceeding at law against the tenants, and from receiving any further rents, and for a receiver in the mean time.* [ \*334 ]

Humbly complaining sheweth unto your lordship your orator G. B. of, &c. That J. C. of, &c. was in his life-time and at the time of his death hereinafter mentioned seised and possessed of or well entitled to a considerable real and personal estate, and being so seised and possessed he the said J. C. on or about, &c. duly made and published his last will and testament in writing, and which was executed, &c. And thereby after confirming an indenture of settlement therein mentioned of the — day of —, and the trusts therein mentioned, and which have since expired by length of time or otherwise; and after giving and bequeathing unto E. S. therein named an annuity of £— per annum, and to his sister E. R. an annuity of £— per annum, and after charging his real and personal estates with the payment thereof, he gave and devised, &c. [all his estates to plaintiff and S. B. I. H. and G. W. in trust to pay the aforesaid annuities, and the surplus to the sole use of testator's daughter E. C. for life, and after her death to her issue, as tenants in common, in default thereof, over.] And your orator further sheweth that after the making and publishing of such will as aforesaid, the said testator duly made and published a codicil thereto, bearing date, &c. and thereby directed, &c. [£— per annum to be added to aforesaid annuities, and revoked the appointment of G. W. as executor and trustee.] As in and by the said will and codicil or the probate copy thereof when produced to this honorable court will appear. And your orator further sheweth that soon after the making and publishing the said will and codicil, and on or about — the said J. C. departed this life without altering or revoking his said will, save as the same is altered by the said codicil, and without altering or revoking the said codicil, leaving the said E. C. his daughter and only child and heiress at law, and your orator and the said S. B. and I. H. his executors and trustees named in his said will and codicil, him surviving; and upon or soon after the death of the said testator, your orator and the said S. B. and I. H. duly proved the said will and codicil in the Prerogative Court of the Archbishop of Canterbury, and took upon themselves the burthen of the execution thereof, and possessed themselves of the

Statement of testator's will, with a codicil thereto.

Death of testator leaving a daughter an only child.

Probate of the will and codicil by the executors who possessed themselves of

the personal and took possession of the real and leasehold estates, and applied the rents pursuant to the directions of the will.

[ \*335 ]

Marriage of testator's daughter with T. C. with the consent of the trustees.

A settlement made upon her marriage.

That an account was stated with the daughter and her husband by the trustees of all moneys received, and the balance paid to the husband.

A release executed to the trustees.

As to the sum now remaining.

Death of plaintiff's co-trustees.

Death of T. C. leaving a widow and three children.

Marriage of the widow with the defendant E. J. who has obstructed plaintiff, got into receipt of the rents, brought ejectments, and

personal estate and effects of the said testator, and also entered into and upon the possession of his real and leasehold estates so devised to them as aforesaid, and received the rents and profits thereof, and duly applied the same and the interest arising from the said personal estate in the payment of the said annuities, and in the maintenance \*and education of his daughter pursuant to the directions of his said will. And your orator further sheweth that the said E. C. did soon afterwards in or about — by and with the privity consent and approbation of your orator and the said S. B. and I. H. intermarry with T. C. of, &c. whereby the said E. C. and her said husband T. C. in her right became entitled to the residue of the said testator's leasehold houses premises and personal estate so devised by his said will as aforesaid. And your orator further sheweth that by an indenture bearing date, &c. and made between your orator and the said S. B. and I. H. of the first part, the said E. C. of the second part, and the said T. C. of the third part, being an indenture of settlement made previously to and in consideration of the marriage then intended and afterwards had between the said E. C. and T. C. reciting, &c. [*the property settled in trust for the husband for life, then for the wife for life, and afterwards as therein mentioned.*] As in and by, &c. And your orator further sheweth that your orator and the said S. B. and I. H. did upon the marriage of the said T. C. and E. C. make up an account with them of all money and effects whatsoever had received produced paid applied or disposed of by them or any of them, by from or out of the said freehold and leasehold and of all other the real and personal estates whatsoever of the said J. C. deceased, which were since the death of the said T. C. received by them or any of them in pursuance of the trust and executorship reposed in them by the said J. C. and did pay to him the said T. C. the balance due to him on such account. And they the said T. C. and E. his wife, did thereupon execute to your orator and the said S. B. and I. H. a general release bearing date, &c. And your orator further sheweth that there is now remaining the sum of £—— £3 per cent. consolidated bank annuities in the name of your orator and the said S. B. the only remaining part of the trust funds mentioned in the said indenture of settlement of, &c. And your orator further sheweth that the said S. B. and I. H. have severally departed this life, and the said T. C. hath since also departed this life, leaving the said E. his widow and relict and three children, viz. T. C. C. T. W. C. and C. C. then and now infants under the age of twenty-one years him surviving, and your orator is become the surviving trustee and executor of the said will, and the widow and relict of the said T. C. hath sometime since intermarried with E. J. one of the defendants hereinafter named; and since such intermarriage the said E. J. hath obstructed your orator in the execution of the said trusts of the said testator's will, and hath got into the possession and receipt of the rents and profits of part of the said trust estates, and hath received the same for a long time past, and insists on having a right to receive the same, and hath for the enforcing the payment of such rents brought ejectments and other actions against some of the tenants of the said trust estates, and distrained upon the goods of others of

them, and threatens to proceed in such actions and otherwise against the tenants of the said premises, and the said E. J. hath applied and converted the money so received by him to his own use, without any regard to the annuities charged on the said estates by the said testator's will and codicil and other incumbrances made thereon \*by the said E. his wife before her intermarriage with the said E. J., and by means thereof the said annuities and incumbrances are become in arrear, and your orator is obstructed in the execution of the trusts aforesaid, and is threatened with divers suits and actions for the non-performance of the said trusts, and is otherwise put to divers large expenses and costs in and about the premises, and hath been obliged to give notice to the said tenants not to pay the rents to any person but himself, and to defend them in the actions so brought. And your orator being the only surviving trustee named in the said will is desirous of being discharged from the trusts thereof, and of assigning over the said trust premises to some other fit and proper person, to be approved of by this honorable court. And your orator hath frequently and in a friendly manner applied by himself and others to the said E. J. and E. his wife and requested them to join with your orator in nominating and appointing some other fit and proper person to be trustee of the said premises, and to permit your orator to assign to such person the said trust estates and premises. And your orator well hoped that the said E. J. and E. his wife would have complied with such your orator's just and reasonable requests as in justice and equity he ought to have done. BUT NOW SO IT IS may it please your lordship that the said E. J. and E. his wife combining and confederating with the said T. C. C. T. W. C. and C. C. and with E. R. of, &c. M. W. and R. W. of, &c. and with other persons refuse to comply therewith, and they insist that your orator shall not be discharged from the said trusts before he hath passed the accounts thereof, under a pretence that there is a large sum of money due to them from your orator on account thereof, the contrary whereof your orator charges to be the truth, and that your orator is and always hath been ready and willing and hereby submits to account for the trust money received by him and the application thereof, in such manner as this honorable court shall direct. And the said defendants E. R. M. W. and R. W. severally pretend and set up some right claim or interest in to or out of the said trust estates and premises or some part thereof, but they refuse to set forth or discover what estate right title or interest they or any of them have or claim to have in to or out of the said trust estates and premises and how they severally derive and make out the same, and they refuse to permit or consent to your orator's being discharged from the trusts of the said testator's will and codicil. All which actings, &c. [*see form VI. p. 5, interrogating to the stating and charging parts.*]

And that an account may be decreed to be taken of the rents and profits of the said trust estates received by the said defendant E. J. or any other person or persons by his order or for his use; and that what shall be found due from him on the balance of such account may be paid by him to your orator to be applied and disposed of upon the trusts and for the purposes in the said testator's will

made distresses, and applied the moneys received to his own use.

[ \*336 ]

Plaintiff threatened with actions for non-performance of the trusts, and desirous of being discharged.

Applications to E. J. and E. his wife, to concur in appointing new trustees.

#### IV.

Refusals by them, insisting that plaintiff ought not to be discharged before he has passed his accounts, and that there is a large balance due from him.

Charge the contrary, and that he is willing to account.

Claims set up by the other defendants who dissent to plaintiffs' discharge.

Prayer.

[ \*337 ]

and codicil declared and expressed concerning the same; And that your orator may be discharged from the trusts of the said testator's will and codicil upon passing his accounts, and which your orator is ready and willing and hereby submits to do in such manner as this honorable court shall please to direct; And that it may be referred \*to one of the masters of this honorable court to approve of three or more fit persons to be trustees of the said trust estates funds and premises in the place and stead of your orator, and that your orator may be at liberty to assign transfer and convey the said trust estates and premises unto such new trustees when approved of by this honorable court; And that your orator may be indemnified in so doing by the order and directions of this court, and may retain or be allowed out of the trust moneys now in his hands or which shall hereafter come to his hands all and every his reasonable costs and charges in and about the premises aforesaid, or that he may be paid the same by the said defendant E. J.; And that in the mean time some proper person may be appointed by this honorable court to be receiver of the rents and profits of the said trust estates, and that the necessary directions may be given in that behalf; And that the said E. J. may be restrained by the order and injunction of this honorable court from all further and other proceedings at law against the tenants of the said trust estates or any of them, and from any further receipt of the rents and profits thereof, or otherwise intermeddling with the said trust estates moneys and premises. [*And for further relief, see form VIII. p. 5.*] May it please, &c. [*see forms No. 1 and 4, p. 6.*]

T. N.

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CXXIII. *Introductory statements and charging part of a bill filed against the executors of a deceased trustee and the surviving trustees under a marriage settlement, for converting to their own use moneys produced by the sale of certain trust estates under an act of parliament.*

*Prayer that the defendants may be declared responsible for the amount misapplied, and the same, when paid in, may be invested on government securities: that the surviving trustees may be discharged from the trusts, and new trustees appointed; that the estates remaining unsold may be sold, and the produce applied according to the trust of the act of parliament; and if necessary that the usual accounts may be taken of the personal estate of the deceased trustee.*

That no sum of stock, is now nor was at the date of plaintiff's marriage settlement, standing in the trustees'

And your orators further show that they have lately discovered as the truth is that neither the said sum of —l. 3 per cent. consolidated bank annuities nor any part thereof is now standing in the names of the said W. W. F. W. W. W. and W. C. or of any or either of them, and that in fact the said stock or any part thereof was not standing in the names of the said trustees or of any or either of them, at the time of the date of your orator's said marriage

settlement, but that the whole of the moneys arising from the sales of the said estates have been applied by the said trustees to their own use; and that the said sum of —£. bank annuities which is stated to have been purchased with the said sum of —£. was very soon after or about the time of passing of the said act of parliament transferred or sold out by the said trustees, who have applied the produce thereof to their own use; and your orators being the \*only persons interested in the said estates funds and premises after the death of the said I. P. have caused application to be made to the said W. C. F. W. and W. W. and to the said B. H. and J. L. as the executors of the said W. W. deceased for an account of the produce of the said trust estates and funds, in order that the same may be properly secured, and your orators well hoped that such application would have been complied with, as in justice and equity it ought to have been. BUT NOW SO IT IS, &c. [*see form VI. p. 5,*] they refuse to give your orators any account of their transactions relating to the said trust moneys and premises, and they refuse to discover and set forth when and by whom the said sum of £—— hereinbefore mentioned was first paid to the said trustees or any or either of them, and when and by whom the same or any part thereof was laid out in the purchase of the said sum of £—— bank annuities, and when and by what means and for what purpose the same were transferred into the names of the said trustees, and what has since become of the said sum of £—— bank annuities, and when and by whom and to whom and for what sum of money or other consideration the same was transferred out of the names of the said trustees: and the said defendants also refuse to discover and set forth a full true and particular account of all the said estates and premises comprised in the said act of parliament which have been sold since the passing of the said act, and by whom and to whom and in what names and for what prices and sums of money the same respectively have been sold, and to whom all such sums of money were paid, and what persons gave or joined in giving receipts for the same, and how and in what manner all such sums of money have been applied, and who are or is now accountable for the same; and whether the purchase-moneys or any part or parts thereof have or hath and when been laid out on any and what government securities or other securities, and by whom and in whose names or name, and what hath since become of such securities; and the said defendants also refuse to state whether any and which of the said estates and premises still remain unsold. And the said defendants sometimes pretend that the said defendant W. C. alone hath acted in the said trust and is accountable for the said trust moneys, and that he hath received the said sum of £——, and also all the moneys arising from the sales of the said estates and premises and hath applied the same to his own use; and that the said W. W. deceased, F. W. and W. W. respectively never received any of the moneys or joined in giving any receipts or acknowledgments for the said moneys or any part thereof. Whereas your orators charge the contrary of such pretences to be the truth, and that the said W. C. hath been enabled or permitted by the said W. W. deceased F. W. and W. W.

names, but that the produce of the sales had been applied by them to their own use.

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Applications made to the defendants.

Refusals by them to give any discovery with regard to the trust funds,

or the estates which have been sold, or the produce thereof, or how invested,

or the estates remaining unsold.

Pretence, that defendant W. C. has alone acted, and is solely accountable for the produce of the sales.

Charge the contrary, and the circumstances ren-

dering the surviving trustees and the executors of the deceased trustees liable.

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Charge that the estates remaining unsold ought to be sold, and new trustees appointed.

Prayer.

to receive all the said moneys and to convert the same to his own use, and that he hath wasted the same, and that they all became responsible for the same. And particularly your orators charge that before or about the time of passing the said act of parliament the said sum of £—— 3 per cent. consolidated bank annuities stood in the joint names of all the said trustees, and was afterwards transferred out of their names into some other name or names; and that \*the said defendants W. C. F. W. and W. W. and the executors of the said W. W. deceased ought to be compelled either to answer and pay all the said trust moneys originally received by them or any of them as aforesaid, or to account for the produce of the trust funds in which the same were at any time invested, or to replace such trust moneys, as shall appear to be most for the advantage of the parties interested in such trust premises, and that such parts of the said trust estates and premises comprised in the said act of parliament as shall appear to remain unsold ought to be sold under the directions of this court, and new trustees ought to be appointed under the aforesaid settlement and act of parliament in the room of such of the said trustees as shall appear to have committed breaches of their said trusts; but the said I. P. and R. C. respectively refuse to concur with your orators in this suit. All which actings, &c. [*see form VI. p. 5, and interrogate to the stating and charging parts.*]

And that the said defendants W. C. F. W. and W. W. respectively, and the said defendants B. H. and I. L. as the executors of the said W. W. deceased or such of them as this honorable court shall think fit may be declared to be responsible for all the said trust moneys, or for the value or produce of such securities as the same have been invested in or have been alleged to be invested in, as shall appear most for the benefit of the persons interested in the said trust funds; and may be decreed to answer and pay such moneys accordingly; and that the same when paid in may be laid out and secured in government funds or securities for the benefit of the persons interested therein under the direction of this honorable court; and that the said defendants W. C. F. W. and W. W. respectively may be discharged from the trusts of the said indenture and act of parliament, and that new trustees if necessary may be appointed in their stead under the direction of this court; and that all such of the said trust estates as remain unsold may be sold under the directions of this court, and that the moneys arising from such sales may be secured and applied according to the trusts of the said act of parliament; and in case the said B. H. and I. L. shall not admit assets of the said W. W.'s estate to answer what the same shall be responsible for in this suit, then that all necessary accounts may be taken of the said W. W.'s personal estate possessed by them respectively and of the application thereof. [*And for further relief.*]

R. S.

\*CXXIV. *Prayer of a bill filed against trustees under a settlement for selling part of the trust fund and converting it to their own use ; Praying that they may be removed and be decreed to replace so much stock as they have sold out ; also for an injunction against them and the Bank of England<sup>(3)</sup> to restrain the transfer of the remainder of the stock standing in the trustees' names, and that new trustees may be appointed,<sup>(4)</sup> and the dividends of the trust funds paid to the tenant for life.*

And that the said defendants R. S. and W. L. may be removed from being trustees under the said indenture of settlement, and that they may be decreed by this honorable court to replace all such parts of the said trust stock as have at any time been sold out or transferred by them, and that they may be restrained by the injunction of this honorable court from selling or transferring any part of the said residue of the said £—— 3 per cent. consolidated bank annuities now standing in their names ; and that the said defendants the governor and company of the Bank of England may in like manner be restrained from permitting the said £—— 3 per cent. consolidated bank annuities, the residue of the said £—— like annuities, to be transferred without the order and direction of this honorable court ; and that new trustees may be appointed by and under the direction of this honorable court in the room of the said defendants R. S. and W. L., and that they may be directed to transfer the said sum of £—— 3 per cent. consolidated bank annuities to such new trustees as this honorable court shall direct, and that the dividends thereof may be paid to the said I. P. or his assigns during his life, and after his death according to the trusts of the said settlement. [*And for further relief, see form VIII. p. 5.*]

W. C.

*Pray subpoena and injunction against  
R. S. W. L. and the governor and  
company of the Bank of England,  
and subpoena against I. P.*

(3) See note (1), *antea*, p. 291.

(4) For other forms of prayers for the appointment of new trustees, *vide antea*, p. 255, 260.

\*23. BILLS BY UNDERWRITERS IN RESPECT OF FRAUDS PRACTISED  
UPON THEM IN THE INSURANCE OF SHIPS.(1)

CXXV. *Bill by underwriters for a fraud practised upon them in the representation of the voyage, the plaintiffs waiving any answer to any matters which might prove or discover that the defendants carried on trade with the revolted colonies.*(2) *Prayer for an injunction to restrain the defendants from proceeding at law, and for a commission to examine witnesses abroad.*

States that W. W. of, &c. alone or jointly with some other persons, was or were or pretended to be before and at the time of making the insurance after-mentioned owner or owners of a certain merchant ship or vessel called —, and they or one of them particularly the said W. W., or I. B. and T. G. of the city of — insurance brokers and copartners, as agents for and on the behalf of the owners or owner of the said ship, on or about — caused a policy of insurance to be opened at the city of — on the said ship — and her cargo, against the danger of the sea and capture of any foreign enemy on a voyage to be performed by the said ship from the port of — to —, and which voyage it was upon such occasion pretended that the said ship was immediately to make, and that such insurance was accordingly effected at the city of — on or about, &c. and amongst other persons who underwrote or subscribed the said policy *plaintiffs* respectively underwrote the same for the sum of £— each at or after the premium of — guineas per cent. to return 5 per cent. for having departed with the West India convoy if arrived, *i. e. plaintiff* I. R. the sum of £— \*upon the said ship which was valued in the said policy at £—, and the rest of *plaintiffs* the like sum of £— each upon the cargo on board the said ship. As in and by, &c.

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(1) Insurances *fraudulently* obtained may be set aside; as where a merchant having a doubtful account of his ship insured her without acquainting the insurers of what he had heard with regard to the danger the ship was in, it was held to be a fraud, and the policy was ordered to be delivered up with costs, *but the premium to be paid back*, and allowed out of the costs; *De Costa v. Scandret*, 2 P. Wms. 169. 1 Madd. Ch. Pr. 299. Park on Insurance, 7th edit. 595. But at law in cases of *fraud* the assured cannot recover the premium; *secus*, if the policy be avoided on account of a misrepresentation made without any fraud; Park on Insurance, 7th edit. 329, 574, 5. And see *Wilson v. Duckett*, 3 Burr. 1361, where the insurer had offered by his bill to pay back the premium.

Where a ship is insured *at and from a place*, and it arrives at that place, so long as the ship is preparing for the voyage upon which it is insured, the insurer is liable; but if all thoughts of the voyage be laid aside, and the ship lie there five, six or seven years with the owner's privity, the insurer is not liable; *Chitty v. Selwin*, 2 Atk. 358, on motion for a commission and for an injunction in the mean time. Park on Insurance, 63, 594.

Where a policy of insurance on a life was fraudulently obtained, the policy was decreed to be delivered up with costs, and the premium received on the policy directed to go in part of costs; *Whittingham v. Thornbury*, 2 Vern. 206; S. C. Pre. in Ch. 20.

(2) See the judgment of Sir John Leach, V. C. in the case of *Dr. Thorpe v. Ma-cauley*, 5 Madd. 228, and the cases referred to in note (s), p. 231.



That notwithstanding the representation made to *plaintiffs* at the time of making the aforesaid insurance, with regard to the port of the said ship's destination, the voyage really intended to be made by her was not from the port of — as mentioned and expressed in the said policy, but from the port of — to — or some other port in — or to some other different port or place than —. And *plaintiffs* having been deceived and imposed upon by such untrue representations of the said ship's intended voyage, the said insurance was fraudulent, and therefore the said policy was null and void.

That the said ship afterwards sailed from the port of — with some other ships which were to proceed under convoy for —, but the said ship — soon after quitted the said fleet and convoy and deviated from her regular course or track of such a voyage and proceeded to some other port or place not specified or mentioned in the said policy of insurance, particularly to the port of — or some other port or place in — where the said ship and her cargo were sold for a large sum of money in the whole, and which was afterwards received by the said W. W. and the other joint owners of the ship or some or one of them.

That *plaintiffs* well hoped under the circumstances aforesaid they should not have been called upon for payment of any sums of money whatsoever on account of their having subscribed or underwrote the aforesaid policy of insurance.

But defendants pretend that the insurance was not made fraudulently or unfairly, and that *plaintiffs* were not in any manner imposed upon therein, and that the voyage actually intended to be made by the said ship — was the voyage particularly mentioned and specified in the said policy, viz. from the port of — to — and that she never made any deviation therefrom. And they also sometimes pretend that the said ship was lost or foundered at sea in the regular course or track of the said voyage. And at other times they give out that the said ship was in the course of her voyage captured by the enemy and afterwards condemned as lawful prize, and that for some or one of such reasons *plaintiffs* and the several other underwriters on said policy became liable to pay the severals sums insured or underwrote by them respectively on the aforesaid policy.

Charge the contrary, and that *plaintiffs* were deceived and imposed upon in manner aforesaid respecting the place or port of the said ship's destination, for that the said ship was at the time and upon the occasions aforesaid destined or intended for a voyage to — or some other port in — or some other port or place in —. And *plaintiffs* charge that the said ship in the course of the said pretended voyage separated from the rest of the ships or fleet, and made a deviation and proceeded or sailed for the port of — or some other port or place in —, or to some other port or place different from the port or destination mentioned in the said policy, where the captain or some other persons or person on board sold and disposed of the said ship and cargo as hereinbefore is mentioned, \*and that divers remittances were afterwards made to — on account of such sales or the produce thereof to the said confederates the owners or some or one of them, such fraudulent insurance

The real destination of the ship not as described in the policy.

Ship sailed under convoy and afterwards deviated from the regulated course, and was subsequently sold by the owners

Pretence that the insurance was not made fraudulently, and that the voyage was actually made, and the ship afterwards lost at sea or captured.

Charge the contrary; and that *plaintiffs* were imposed upon.

That the ship deviated from her course.

That the captain sold the ship and cargo in pursuance of a scheme

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concerted between the defendants.

That the ship was not lost or captured.

No protest ever made as usual in such cases.

Charge as to a letter sent by the brokers to their agent directing him to apply to plaintiffs to cancel the policy upon repayment of the premium.

Charge as to letters, &c. from which the truth of the matters charged would appear,

as aforesaid having been previously made thereon pursuant to and in consequence of some plan or scheme concerted or contrived between the said confederates or some or one of them and the said — the captain, or to which they some or one of them were or was privy, and that it was never meant intended or understood by and between the said confederates or any of them that said ship should perform the voyage specified or mentioned in the aforesaid policy of insurance or proceed to —. And *plaintiffs* moreover charge that the said ship was not lost captured or taken by the enemy, or however not in the regular course or track of a voyage from — to — as mentioned in the said policy of insurance. And as evidence thereof *plaintiffs* charge that the said captain or any other person never made any protest of the loss or capture of the said ship as is usual or customary in such cases, and which would have been made if the said ship had actually been lost or captured, nor was the said ship ever condemned or any sentence of condemnation passed upon her as a lawful prize. And as a further evidence of the aforesaid deception and imposition *plaintiffs* charge that the said confederates [*the insurance brokers*] or some persons by their orders or directions or with their privy or consent some time in or about the month of — wrote and sent a letter to their agent or correspondent at —, employed by them to effect the aforesaid insurance directing him to apply to *plaintiffs* or some other of the underwriters on the said policy and to offer to cancel the said policy upon the repayment of the premiums; and such a proposition and offer was also made by the direction or with the knowledge of the said confederates [*the owners*,] and in consequence of their knowledge conviction and belief that the said insurance was fraudulently and unfairly made on the part of the said confederates [*the owners*,] and that the underwriters on the said policy were deceived or imposed upon respecting the port of her destination, and that the said ship was not actually lost or captured, and that for such or some other reasons the said policy was null and void, and that the said confederates [*the owners*] have no just claim or demand upon the underwriters in respect of the sums insured or underwrote thereon. And *plaintiffs* also charge that divers letters or notes have been written by and sent to or received by or passed between the said confederates or some or one of them and their correspondents or agents at —, or the persons or person employed by them the said confederates or some or one of them in or about the making of the aforesaid insurance and the said — the captain of the said ship or some or one of them relating to or in some manner concerning the several matters and things hereinbefore mentioned and inquired after, particularly the making of the aforesaid insurance and the fraud or deception practised or intended to be practised upon *plaintiffs* and the underwriters of said policy, and which said letters or notes or some copies abstracts or extracts thereof or of some or one of them, together with divers other papers memorandums or other writings relating to the matters aforesaid, \*are now or lately were in the custody possession or power of them the said confederates or some or one of them. And *plaintiffs* also charge that the truth of the several matters and things hereinbefore charged and set

forth, and particularly that *plaintiffs* were deceived or imposed upon in the making of the aforesaid insurance and that the said ship was not lost or captured, and that the said confederates [*the owners*] of the said ship have no just or fair demand upon *plaintiffs* by virtue of or under the aforesaid policy as would appear in and by the said letters and papers in case the said confederates would produce the same, but which they refuse to do although they have been frequently applied unto for that purpose; and under such or the like pretences as aforesaid or some others equally unjust or unreasonable the said confederates insist on the contrary; And the said confederate W. W. hath also lately commenced separate actions at law against *plaintiffs* in his Majesty's court of King's Bench at W. to recover the sums respectively underwrote by them on the said policy, and he threatens to proceed to judgment and execution thereon, well knowing that *plaintiffs* are not able to make a good defence at law in the said actions without a full disclosure and discovery of the several matters aforesaid, and without the benefit of the testimony of their witnesses who reside at — and — and other parts of —, and also in other parts and places abroad, and who could prove the truth of the several matters and things hereinbefore charged and inquired after. And the said confederates refuse to discover to *plaintiffs* the names or places of abode of the other persons whom they sometimes allege to be joint owners with them of the said ship. All which actings, &c. [*Proceed as in form VI. p. 5, as far as the words "matters aforesaid" and then proceed thus:*] and that as fully and particularly as if the same were here repeated and they thereunto distinctly interrogated. To THE END thereof, &c. (save and except that *plaintiffs* do not require, but hereby waive any answer from the said defendants to any of the facts and charges hereinbefore contained, which might prove or discover that they carried on any trade or commerce with the revolted colonies in — or had any unlawful intercourse or communion with any person residing therein,) and more particularly that the said defendants may in manner aforesaid answer and set forth whether, &c. [*interrogating to the stating and charging parts.*]

And that *plaintiffs* may have a full disclosure and discovery of the several matters and things aforesaid. And that the said defendant W. W. may be restrained by the injunction of this honorable court from proceeding in the said actions already commenced by him, and that he and all the said other defendants may in like manner be restrained for commencing or prosecuting any other actions or action or in any other manner proceeding at law against *plaintiffs* or any of them touching the several matters and things aforesaid. And that *plaintiffs* may have one or more commission or commissions issuing out of and under the seal of this honorable court for the examination of their witnesses at — and — and other parts of — or any other parts or places abroad as there may be \*occasion. [*And for further relief, see form VIII. p. 5.*] May it please, &c. [*see forms No. 1 and 4, p. 6.*]

but that the defendants refuse to produce the same. That defendant W. W. has commenced actions against *plaintiffs* on the policy.

That defendants refuse to discover the names of the other owners.

*Plaintiffs* waive any answer to any charges tending to prove that defendants carried on trade with the revolted colonies.

Prayer.

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J. L.

CXXVI. *Part of a bill (comprising the stating and charging parts,) filed by underwriters against a merchant resident abroad, and his agents in England, for frauds practised by them in the insurance of two ships.—The merchant being in the habit of buying old worn out ships, fitting them out, and insuring them at high prices.—Defendants claiming as for a total loss as to one ship, and for the amount insured upon the other ship in respect of repairs done to her.*

Humbly complaining show unto your lordship your orators, &c. all of, &c. merchants and underwriters, That E. B. D. M. and I. T. of the city of ——— merchants, trading under the style and firm of E. B. and Co. three of the defendants hereinafter named, in or about the month of ——— were or pretended to be interested as the agents of I. E. then residing at ——— the other defendant hereto in a certain ship or vessel called N. of which one R. C. was the master, which ship was then alleged to be at ———. And your orators further show unto your lordship that in the said month of ——— the said defendants E. B. D. N. and I. T. under the name and style of E. B. and Co. caused a policy of insurance to be opened in the said city of ——— in the usual form as well in their own names as for and in the name or names of all and every other person and persons to whom the same did might or should appertain in part or in all for assuring the said ship called N. at the premium of 10 guineas per cent. lost or not lost, at and from ——— to ———, and at and from thence to ——— with liberty to touch and trade barter and exchange the property at the aforesaid places, or at any ports in the island of ——— and to touch at any ports of ——— in her return, and from thence to ———. And it was declared that the said ship for so much as concerned the assured and assurers was valued at £——. And your orators further show unto your lordship that your orators [*stating their names*] by themselves and their agents severally underwrote the said policy for the respective sums of £—— each, and that your orator T. T. by I. R. his agent in that behalf underwrote the same for the sum of £——. And your orators further show unto your lordship that the said E. B. D. N. and I. T. in or about the month of ——— were or pretended to be also interested as the agents of the said I. E. in a certain other ship or vessel called S. of which one W. was then master, and which ship was also alleged to be at ——— aforesaid. And your orators further show that in the said month of ——— the said E. B. D. N. and I. T. caused another policy of insurance to be opened in the said city of ——— in the usual form for assuring the ship or vessel called S. at a premium of 12 guineas per cent. lost or not lost, at and from ——— to ———, and at and from thence to ——— or any port or ports in the island of ———, with liberty to trade \*there, and on her return to touch at any port or ports of ——— and at and from thence to ——— as aforesaid for orders. And it was declared that the said ship by agreement should be valued at £——. And your orators further show that your orators [*stating*

Three of the defendants as agents of I. E. interested in a ship called N.

Policy of insurance opened and effected on same.

Three of the defendants as agents of I. E. interested in a ship called S.

Policy of insurance opened and effected on same.

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*their names*] by themselves or their agents severally underwrote the said policy for the respective sums of £—— each, and that your orator T. T. by I. R. his agent underwrote the same for the sum of £——. As in and by the said policies when produced to this honorable court will more fully appear. And your orators further show unto your lordship that the said defendants allege that the said ship called N. sailed from —— aforesaid on or about —— on her said voyage in the said policy of insurance mentioned, and that the said ship hath never been heard of since she sailed upon the said voyage, and that the said ship or vessel whilst sailing and proceeding on her said voyage in the said first mentioned policy of insurance mentioned, and before the completion thereof must have been lost by and through the mere perils and dangers of the seas and by strong and tempestuous weather; and the said defendants E. B. D. N. and I. T. have as the agents of the said I. E. upon pretence of such allegation lately demanded from your orators respectively the sums severally underwritten by them on the aforesaid policy. And your orators further show unto your lordship that the said defendants also allege that the said ship called S. sailed from —— in the month of —— upon her said voyage in the said policy of assurance thereon mentioned, and that the said ship touched at some place on the coast of —— and went from thence to ——, and on the —— day of —— sailed from —— on her return to ——, and afterwards and whilst the said ship was proceeding on her said voyage she was by and through the mere perils and dangers of the seas and by stormy and tempestuous weather so greatly damaged and injured, that on or about the —— day of the same month of —— she was compelled for the preservation of the said ship to put into some port in ——, and there to undergo very heavy and expensive repairs to the amount of the sums insured as aforesaid upon the said ship; and the said defendants E. B. D. N. and I. T. have as such agents as aforesaid lately demanded from your orators respectively the sums severally underwritten by them on the said last-mentioned policy. And your orators further show unto your lordship that upon inquiring into the several matters aforesaid your orators have discovered that the said defendant I. E. was a merchant or trader residing at ——, and for many years had been and was a domiciled subject of the —— government there, and that the said I. E. acting as the —— consul there availed himself of his situation to purchase at a low price many old worn-out and crazy vessels, and fitted out or pretended to fit the same out for different voyages, and well knowing that the said ships were not sea-worthy caused the same and the cargoes thereof to be insured in the city of —— at high prices. And in particular your orators show that the said ships N. and S. were old vessels and worn out and were by no means in a fit state or condition to proceed on the said voyages insured; and so it would appear if the said defendants would set forth when and where the said ships were built, and when and from whom and at what prices the said \*ships were brought by the said I. E. and what repairs had been done to the said ships respectively after he purchased them, and what moneys had been expended, and what was the particular state of

Defendants allege that the ship N. sailed on her voyage and has never been heard of since, and claim the moneys insured.

Defendants allege that the ship S. sailed on her voyage, and through stress of weather put into port, and underwent repairs to the amount of the sums insured, and defendants claim the sums insured.

Plaintiffs have discovered that I. E. is a merchant, and purchases crazy vessels, fitting them out for voyages, and insuring them at high prices.

That ships N. and S. were worn out.

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That ship N. did not sail on the voyage insured.

That the master had instructions to pursue a different voyage.

That defendant I. E. knows where the master and seamen are, and refuses to discover their names.

That the repairs to the ship S. were necessary by reason that she was not seaworthy.

That she deviated from the voyage insured.

That I. E. was an alien born, and was and is an enemy.

the repairs of the said ships at the time they are alleged to have sailed on their said voyages, and by whom the state of their repairs had been surveyed before they sailed upon their said voyages, and what reports were thereupon made by the person or persons who so surveyed them. And your orators further show that if the said ship N. did in fact sail from —, yet she did not sail on the said voyage insured; and so it would appear from the entries made at the Custom house or other proper office at — on her clearance out from the said port, if the said defendants would set forth the same, or otherwise such entries were false and colorable and meant to disguise and conceal the true destination of the said ship. And your orators further show that the master of the said ship had instructions to pursue another and a different voyage, and did in fact deviate from the voyage insured; and so it would appear if the said defendant I. E. would set forth all and every the instructions given to the master or captain of the said ship on her sailing from —, and all and every the letters and letter written to or received by the said I. E. with respect to the sailing and destination of the said ship. And your orators further show that although it is alleged that the said ship N. has never been heard of since she sailed on her said voyage, yet the said defendant I. E. well knows where the master and seamen who were on board the said ship when she is alleged to have sailed on her said voyage now are, or have been since the alleged time of her sailing; but the said defendant refuses to set forth the names of such master and seamen or to make any discovery with respect to them, in order that your orators may not have the means of proving the several matters aforesaid. And your orators further show that if in fact the said ship S. did undergo such repairs as are alleged by the said defendants, such repairs or the greater part of them were made necessary not by any stress of weather which the said ship had met with on her said voyage, but by reason that she was not sea-worthy at the time she sailed from — as aforesaid. And your orators further show that it was not the intention of the said I. E. when the said ship S. sailed from — aforesaid that she should adhere to the voyage insured, and the said ship did in fact before she put into — as aforesaid in many respects deviate from the said voyage; and so it would appear if the said defendant would set forth the instructions which were given to the master or captain of the said ship, and the particular trade in which the said ship was meant to be employed upon the said voyage. And your orators further show unto your lordship that the said I. E. was an alien born, and was at the time of the assurance of the said ships, and hath ever since continued to be and now is a domiciled subject of the persons exercising the powers of government at —, and that at the time of the loss of the said ship N. if the same were lost as is alleged and at the time the said ship S. put into — as aforesaid, the persons exercising the powers of government at — were and now are enemies of our King, and the said defendant I. E. is an enemy of our King, and adhering to the king's enemies. And your orators \* further show that after the said ship S. had been repaired at the said — she sailed from thence and was soon afterwards

captured by a British vessel; and the said ship and cargo have since been condemned by a Court of Admiralty of this country as Dutch property; and although the said defendant I. E. not only made such assurances as aforesaid on the said ship, but also insured the sum of £—— on the cargo of the said ship, yet the said I. E. hath submitted to such sentence, and hath in no manner appealed therefrom. And your orators further show that the said defendants well know where the masters and seamen of the said ships are now or lately were to be found or heard of, and ought to set forth a list of the names of such masters and seamen, and where they are respectively to be found. And your orators further show unto your lordship that they have by themselves and their agents repeatedly applied to the said defendants, and have requested them to deliver up to your orators the said policies of assurance to be cancelled. And your orators well hoped that they would have complied with such your orator's reasonable requests as in justice and equity they ought to have done. BUT NOW SO IT IS, &c. [see form IV. p. 5.] And the said defendants E. B. D. N. and I. T. as the agents of the said other defendant I. E. have lately commenced actions at law in his Majesty's Court of King's Bench against your orators respectively, in order to recover from them the sums respectively underwritten by them as aforesaid, and the said defendants threaten and intend to proceed to judgment and execution against your orators respectively in the said actions, unless they are restrained therefrom by the order and injunction of this honorable court. And your orators charge that the said defendants have respectively written to each other divers letters concerning or in some manner or in some passages thereof relating to the insurance of the said ships and cargoes, or to the intended voyages, or to their state and condition previously to the alleged commencement of the said voyages, or to the alleged loss of the said ship N., or to the alleged damage sustained by the said ship S., or in some manner or in some passages relating to the several matters aforesaid, or some of them; and the said defendants E. B. D. N. and I. T. have now or have had in their custody or power all and every the letters aforesaid or copies thereof, and also divers protests invoices bills of lading surveys books instruments or writings in some manner and in some parts concerning or relating to the matters aforesaid or some of them. And your orators charge that it would appear upon the production of the said letters protests invoices bills of lading surveys books papers instruments and writings that the said policies of assurance ought to be delivered up to your orators respectively to be cancelled, and that the said defendants E. B. D. N. and I. T. ought not to maintain the aforesaid actions against them, but the said defendants refuse to produce the same. And your orators charge that the said I. E. is now resident at —— or elsewhere out of the jurisdiction of this honorable court. And your orators charge that they are unable to make a full defence to the demands of the said defendants in respect of the said policies of assurance without the testimony of divers persons resident at —— and elsewhere out of the jurisdiction of this honorable court. All which actings, &c.

That ship S. was captured and condemned as Dutch property, and that I. E. has submitted to such sentence.

Applications to defendants and refusals.

That defendants E. B. D. N. and I. T. have commenced actions against plaintiffs.

Charge as to letters, &c.

Charge that I. E. is resident abroad.

And that plaintiffs require the testimony of persons resident abroad.

**\*\*CXXVII.** *Prayer of a bill filed by underwriters to compel the production of books, accounts, &c. and for a commission to examine witnesses abroad; and in case the ship was not seaworthy or was wilfully lost, that plaintiffs' names may be struck out of the policy.—Or if they should be liable to the defendants, then that plaintiffs may have credit for the property saved, and for an account thereof:—also for an injunction to restrain the defendants from prosecuting any actions against the plaintiffs.*

And that the said confederates may be decreed to produce and leave in the hands of their clerk in court for the usual purposes all books accounts letters papers instruments documents and writings in their or any of their custody or power relating to or concerning the matters aforesaid; and that one or more commission or commissions may issue under the seal of this honorable court to examine your orators' witnesses in the said Island of Jamaica and elsewhere beyond the seas as there shall be occasion; and if it shall appear that the said ship A. was not sea-worthy at the time of her arrival off the coast of Africa, or that the said vessel was wilfully lost in collusion with the said W. C. A. C. and T. K. or any of them, then that the names of your orators as underwriters of the said policy of insurance may be struck out of the said policy of insurance. But in case it should appear that your orators are liable to any demands on the said policy of insurance, then that your orators may have credit for the cargo sails tackle and apparel of or belonging to the said ship A. saved out of her and put on board the said ship H. as aforesaid, and that the said confederates W. C. A. C. T. K. G. K. and M. M. may severally be decreed to account with your orators accordingly, and that your orators may be paid or allowed the amount or value of the said cargo sails rigging tackle and apparel so saved as aforesaid. And that the said confederates W. C. A. C. and T. K. may severally and respectively be restrained by the order or injunction of this honorable court from commencing or prosecuting any action or actions at law against your orators or any of them touching the matters aforesaid or any of them, and particularly from proceeding in the said actions already commenced by them against your orators as aforesaid. [And for further relief.]



## \*24. BILLS TO RESTRAIN WASTE.(1)\*

CXXVIII. *Bill by a landlord against his lessee for years,(2) who had ploughed up lands contrary to the terms of his lease, and had suffered the farm to continue out of repair. The bill prays that he may be compelled to re-instate the premises, and to keep them in good repair and condition, and to make satisfaction for the waste done (plaintiff waiving all penalties incurred thereby;)(3) also for an injunction to restrain the defendant from ploughing up other lands and from committing waste.(4)*

To &c.

Humbly complaining sheweth unto your lordship your orator A. B. of —, That your orator being seised in fee-simple of or

(1) As to the instances where the title is legal and the courts of law admit the existence of an injury, but do not afford a remedy, see 2 Freem. 54; 3 Atk. 95, 752, 3 et seq.; 4 Bro. Ch. Ca. 559; Ld. Red. Tr. Pl. p. 140, 4th edit.; and see *Hony v. Hony*, 1 Sim. & Stu. 568, 578; and as to those where the title is equitable, see 19 Ves. 150, 5; and as to those where the injury is not acknowledged at law, which are cases of equitable waste, see 16 Ves. 174, 182, 375 a, where the previous cases are referred to; *Coffin v. Coffin*, Jac. R. 70; equitable waste is a breach of trust, and the assets of a deceased tenant for life are answerable for such breach of trust, *Marquess of Ormonde v. Kynersley*, 5 Madd. 369. On the general subject of waste, see Ld. Red. Tr. Pl. 114, and 136, 7; Madd. Ch. Pr. vol i. p. 138, 140; vol. ii. p. 218. [The references in the preceding notes are to the second edition of Ld. Red. Tr.; a fourth edition having been published since the preceding part was printed, reference is made to that in the subsequent notes.]

(2) The principle applies equally to the case of a tenancy from year to year as to a lease for a longer term; *Onslow v. —*, 16 Ves. 173; *Lathropp v. Marsh*, 5 Ves. 259; *Pratt v. Brett*, 2 Madd. Rep. 62. So also to an under-lessee, *Farrant v. Lovel*, 3 Atk. 722; S. C. Amb. 105.

(3) The forfeiture by waste and all penalties ought to be waived in a bill for restraining waste, (3 Atk. 457,) courts of equity declining to compel a discovery which may subject a defendant to any penalty or forfeiture, and confining the relief given to compensation for the damage done, and restraining future injury; Ld. Red. Tr. Pl. 139, 4th edit.

(4) A mere threat to commit waste is sufficient to ground an injunction upon, *Gibson v. Smith*, 2 Atk. 183; Jac. Rep. 71; but the mere apprehension of waste intended is not sufficient, where the defendant denies any intention. 7 Ves. 309; nor where equitable waste of one kind only has been done or threatened, will the injunction be extended to equitable waste of other kinds, *Coffin v. Coffin*, Jac. Rep. 70. Where the title is doubtful, or disputed as between devisee and heir at law, or otherwise, it will not be granted; *Field v. Jackson*, 2 Dick. 599; *Smith v. Collyer*, 8 Ves. 89; *Pilsworth v. Hopton*, 6 Ves. 50 a; and see *Norway v. Rowe*, 19 Ves. 146, 154.

An injunction may be obtained in respect of equitable waste against a tenant in tail after possibility of issue extinct, *Williams v. Williams*, 15 Ves. 423, 30; and against a tenant for life without impeachment of waste taking the produce of mines unopened, *Tracy v. Hereford*, 2 Bro. Ch. Ca. 137, 8; *Whitfield v. Blewitt*, 2 P. Wms. 241; (and see *Clavering v. Clavering*, 2 P. Wms. 388;) or cutting timber growing either for the ornament or shelter of the house, *Packington's case*, 3 Atk. 215; *Chamberlayne v. Dummer*, 3 Bro. Ch. Ca. 549; *Williams v. McNamara*, 8 Ves. 70, 2d edit.; *Marquess of Downshire v. Sandys*, 6 Ves. 107, 110 n.; *Day v. Merry*, 16 Ves. 375 a; *Lushington*

\* The general rule is, that everything is waste which occasions a permanent injury to the inheritance; but it has been said that the situation of this country requires

Lease granted  
to the defend-  
ant.

\*otherwise well entitled unto the premises hereinafter described, did by a certain indenture bearing date —, and made between your orator of the one part and C. D. of — (the defendant hereinafter named) of the other part, demise lease set and to farm let unto the said C. D. his executors administrators and assigns, All that messuage, &c. [*describing the premises as in the lease*] To hold the same with their appurtenances unto the said C. D. his executors administrators and assigns from the — day of — then last past, for the term of — years thence next ensuing at the yearly rent of

*v. Boldero*, 6 Madd. 149; *Coffin v. Coffin*, Jac. Rep. 70; (and see *Attorney-General v. Duke of Marlborough*, 3 Madd. 498;) or in parks, *Strathmore v. Bowes*, 2 Bro. Ch. Ca. 88; and see 16 Ves. 183; and also against *permissive waste*, *Caldwell v. Baylis*, 2 Mer. 408.

On the equitable rule which restrains a tenant for life without impeachment of waste from felling timber trees unfit to be felled as timber, *Smythe v. Smythe*, 2 Swanst. 252, and the cases collected in note (a), ib. p. 253; or cutting decayed timber, *Perrott v. Perrott*, 3 Atk. 93.

A tenant for life without impeachment of waste, with power to sell, if he sells, is not entitled to the produce of timber on the estate, *Doran v. Wiltshire*, 3 Swanst. 699; and see *Wickham v. Wickham*, Coop. 828; S. C. 19 Ves. 419.

It is not waste to cut timber where necessary for the growth of the underwood in which it is situated, *Knight v. Duplessis*, 2 Ves. sen. 361, and see 16 Ves. 179; but a bill will lie to restrain a tenant for life from cutting underwood of an insufficient growth, *Brydges v. Stephens*, 6 Madd. 279, and see 8 Ves. 105.

An injunction against waste may be obtained against a vendor if the contract is admitted, *Norway v. Rowe*, 19 Ves. 150; so also against a mortgagor, 3 Atk. 210, or a mortgagee in fee, or for years, 3 Atk. 723; but a mortgagor may cut underwood of proper growth, *Hampton v. Hodges*, 8 Ves. 105; 2d edit. and see note (84), *ibid.* An injunction against waste is also obtainable against a lessee to prevent his cutting growing timber, *Vansendau v. Rose*, 2 Jac. & W. 264; *Bishop of Winchester v. Wolgar*, 3 Swanst. 493, note (a); or injuring fish ponds, *Earl Bathurst v. Burden*, 2 Bro. Ch. Ca. 64; or breaking up ancient meadow or pasture land, *Lord Gray de Wilton v. Saxton*, 6 Ves. 106; *Drury v. Molins*, *ib.* 328; or from sowing lands with mustard or any other pernicious crop, *Pratt v. Brett*, 2 Madd. Rep. 62; or from digging the soil for bricks, *Bishop of London v. Webb*, 1 P. Wms. 527; or acting contrary to his express covenants, *Kimpton v. Eve*, 2 Ves. & B. 349; (see further the cases referred to in note (2), *antea*, p. 350;) also to restrain waste by copholders, *Richards v. Noble*, 3 Mer. 673, (overruling *Dench v. Bampton*, 4 Ves. 700;) *et vide antea*, p. 273, from \*XC.; or between tenants in common, see *Twort v. Twort*, 19 Ves. 128, or coparceners, S. C.; so also to restrain the owner of a mine working minerals in the adjoining land of another, though a mere trespass, *Mitchel v. Dors*, 6 Ves. 147; and see *Mortimer v. Cottrell*, 2 Cox, 205; so also to restrain waste by a rector, *Strachy v. Francis*, 2 Atk. 216.

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an application of the rule different from that which might be proper in England. *Keeler v. Eastman*, 11 Verm. 293; *Findlay v. Smith*, 6 Munf. 134. A threat to commit waste is sufficient to ground an injunction upon. *Loudon v. Warfield*, 5 J. J. Marsh. 196; *Livingston v. Reynolds*, 26 Wend. 115. A bill in equity is the appropriate remedy for a mortgagee against a mortgagor in possession, who is impairing the security by committing waste. *Cooper v. Davis*, 15 Conn. 556; *Brady v. Waldron*, 2 Johns. C. R. 148; *Salmon v. Clagett*, 3 Bland. 125; *Capner v. Flemington Mining Company*, 2 Green. Ch. 467. A tenant in dower of coal lands, or a tenant for life, may take coal to any extent from a mine already opened, or sink new shafts into the same vein of coal; *Crouch v. Puryear*, 1 Rand. 258; 7 *Harris*, 323; 12 *Id.* 162; and may take reasonable firewood; *Gardiner v. Dering*, 1 Paige, C. R. 573; but it has been held that a tenant for life has no right to take clay or wood from the premises for the manufacture of bricks. *Livingston v. Reynolds*, 2 Hill, 157; see also, 26 Wend. 115. The injunction to stay waste, is as a general rule prospective, and the court will not, unless under very special circumstances, grant an injunction to prevent the removal of timber already cut; *Watson v. Hunter*, 5 Johns. C. R. 169; and so far as the bill seeks to recover for waste already committed, it cannot be sustained. *Downing v. Palmateer*, 1 Monr. 64.

£—— payable quarterly as therein mentioned, and under and subject to the covenants stipulations and agreements therein contained on the part of the said C. D. his executors administrators and assigns to be observed and performed, In which said indenture is contained a covenant on the part of the said C. D. for himself his heirs executors administrators and assigns that he the said C. D. his executors administrators and assigns should and would, &c. [*stating shortly the covenant to keep the buildings and premises in repair, and also to manage and cultivate the lands,*] As by the said indenture to which your orator craves leave to refer when produced will more fully appear. And your orator further sheweth that the said C. D. took possession of all the said demised premises, and that the same were then in good repair and condition but have since become very ruinous and bad, and the said lands very much deteriorated from the wilful mismanagement and improper cultivation thereof by or on the part of the said C. D., and that he has ploughed up certain fields called —— containing —— acres contrary to the terms of his said lease, and has otherwise committed great spoil waste and destruction in upon and about the said demised messuage, &c. and premises. \*And your orator further sheweth that he hath frequently by himself and his agents applied to the said C. D. and requested him to put the said messuage, &c. and all the buildings fences gates stiles and rails into good repair, and to keep the same in good and sufficient repair during the remainder of the said term, and to make satisfaction to your orator for all the damage done to the said estate by his mismanagement or neglect in the management thereof according to the terms of the said lease and course of husbandry practised in the neighboring country; and your orator hath also in like manner requested him not to plough up any other of the said lands demised to him as aforesaid which he is not at liberty to plough according to the terms of the said lease. And your orator hoped that the said C. D. would have complied with such applications and requests as in justice and equity he ought to have done. BUT NOW SO IT IS, &c. [*see form IV. p. 5,*] the said C. D. absolutely refuses so to do; and he at times pretends that the said messuage or tenement and all the out-houses and out-buildings thereunto belonging and all the buildings fences gates and stiles on the said lands have been constantly during his possession thereof and now are in good repair and condition, and that he hath never ploughed up any part of the said demised lands which he was not at liberty to plough by the terms of the said lease and the course of husbandry used and approved in the neighborhood thereof, and that he hath never in any manner neglected the manuring or taking care of any part thereof but that he hath constantly used and employed cultivated and manured all such lands in a proper regular and careful manner according to the terms of the said lease and a good course of husbandry used and practised in the neighboring country, and that all the said demised premises are in as good plight and condition in all respects as the same were when he entered thereon. Whereas your orator charges the contrary of all such pretences to be the truth. And your orator further charges that the said farm and premises are now from the neglect and gross

Defendant took possession of the premises which were then in good repair, but have since become ruinous and deteriorated in consequence of mis-

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management, and has ploughed up certain fields and committed great waste.

Applications to the defendant.

Pretence that the premises have been kept and are in good repair, that he has not ploughed up any land contrary to the terms of his lease, nor neglected the manuring, and that the premises are in as good condition as when he entered thereon.

Charge the contrary. That the premises are worth £——

less than when he entered.

That it would cost £—— to reinstate them.

That the defendant ought to repair them, and make compensation for the waste done.

That he intends to plough up other lands, and ought to be restrained therefrom, and from committing further waste.

[ \*353 ]  
Prayer.

mismanagement of the said defendant worth to be sold the sum of £—— less than the same were worth to be sold when the said C. D. first took possession thereof, and that it would cost the sum of £—— and upwards to put the same into as good plight and condition as the same were in at the time of the date of the said indenture of lease. And your orator further charges that the said C. D. ought to put the said demised messuage, &c. and premises into good repair and condition, and to make a reasonable compensation to your orator for the waste and damage done or arisen thereto. And your orator charges that the said defendant threatens and intends to plough up the other or remaining pasture fields called —— part of the said demised premises, and that he ought to be restrained therefrom, and from committing any further or other waste spoil or destruction in upon or to the said farm lands and premises or any part thereof. All which actings, &c. [see form VI. p. 5, and interrogate to the stating and charging parts.]

And that the said defendant may be compelled by the decree of this honorable court to put the said messuage, &c. and premises into good and sufficient repair, and to made satisfaction to your orator \*for all waste done committed permitted or suffered by him on the said farm lands and premises, and all damage done by him or occasioned thereto by his mismanagement or neglect (your orator hereby waiving all forfeitures and penalties incurred by the said defendant on account or in respect of the waste done or committed by him on the said demised premises.) And that the said defendant may be decreed to keep the said farm lands and premises in good and sufficient repair and condition during the continuance of his interest therein, and to manage and cultivate the said farm and lands in a proper and husband-like manner according to the terms of the said lease and the custom of the country. And that he may be restrained by the injunction of this honorable court from ploughing up the said remaining fields forming part of the said demised premises, and particularly the said fields called ——, and from committing or permitting any further or other waste or spoil on or to the said demised premises or any part thereof, and that all proper directions may be given for effectuating the purposes aforesaid. [And for further relief, see form VIII. p. 5.] May it please, &c. [see forms No. 1 and 5, p. 6 and 7.]

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CXXIX. *Bill by tenants for life in remainder against a feme covert tenant for life in possession of the settled estates and her husband, for an injunction to restrain them from felling or barking trees, or committing any waste.*(5) *The bill also prays, that an account may be taken of the moneys produced by the sale of trees already felled, and for payment of the amount into the bank ; that the trees already barked may be felled, and the produce thereof paid into the bank ; that the whole moneys so to be paid in may be laid out*

(5) Another form of prayer for an injunction to restrain waste in felling trees, &c. is inserted antea, p. 7, form No. 5.

*in the purchase of lands to be settled to the like uses as the settled estates ; that in default of payment of the moneys to be found due from the defendants, that the same may be satisfied out of the rent of the settled estates, and that for such purpose a receiver may be appointed.*

States that Sir S. A. bart. deceased being seised of an estate tail in possession of and in several manors, &c. situate, &c. and being desirous to settle the same did by indenture, &c. [*Stating an indenture of bargain and sale to make a tenant to the præcipe for suffering a recovery of the manors, &c. with limitation of the uses, To the said Sir S. A. for life ; remainder, To his wife Mary (defendant) for life ; remainder, To the heirs of Sir S. A.'s body ; remainder, To A. B. for life (since dead) ; remainder, To a trustee for 99 years if plaintiff Z. Z. should so long live ; remainder, To plaintiff Z. A. eldest son of Z. Z. for life, sans waste ; remainder, To the first and other sons of Z. A. in tail ; remainder, To the daughters of Z. A. in tail ; remainder, To the second third and other sons of Z. Z. in tail ; remainder, To plaintiff Z. B. daughter \*of Z. Z. for life sans waste ; with similar limitations to her first and other sons ; remainder over.—Trusts of the term to pay the rents as plaintiff Z. Z. should appoint, and in default of appointment then to Z. Z. herself.—A recovery was suffered accordingly.*]

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That Sir A. died without revoking the uses and without issue but leaving M. A. his widow, and the said A. B. in the said indenture of bargain and sale named, as also the *plaintiffs* Z. Z. Z. A. and Z. B. him surviving.

Death of the settlor without issue, leaving widow and the plaintiffs.

That the said A. B. is since dead, and the said defendant Mary A. shortly after the death of the said Sir S. A. intermarried with the defendant S., and being entitled by virtue of and under the trusts and limitations contained in the said indenture of bargain and sale to an estate for and during the term of her natural life only, the said defendant entered on the premises, and hath continued in the possession and receipt of the rents and profits thereof ever since.

Death of a tenant for life in remainder.

That by virtue of and under the trusts and limitations contained in the said indenture of bargain and sale, the *plaintiff* Z. Z. is entitled to an estate for life in the premises expectant on the death of the defendant Mary S., and the *plaintiff* Z. A. is entitled in remainder to an estate for life therein without impeachment of waste, with remainder to his first and other sons in tail ; and that *plaintiff* Z. B. is by virtue of the said indenture of bargain and sale, and for default of such issue of the *plaintiff* Z. A. as also in default of any male issue of the said Z. Z. entitled to an estate for life, with such remainder to her first and other sons as before is set forth.

Marriage of the testator's widow M. S., who became entitled to the estates as tenant for life.

Title of the plaintiffs.

That at the death of the said Sir S. A. there was standing and growing on the said manor and lands several extensive woods, consisting of several hundred acres of land covered with a variety of different trees, and among others of several thousand oak ash and elm trees, the greater part of which said oak ash and elm trees were then of the growth of sixty seventy or eighty years, and were of the height of 30 feet and upwards, and the same measured from

That there were extensive woods growing on the estates. Description of the trees.

That the defendant M. S. has no right to cut trees, or to commit waste.

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That the defendants have cut down many thousand trees, and sold the same;

And also barked many other trees, and are preparing to cut down all the wood growing on the estates.

Representations made to the defendants.

Pretences—that no inden-

six to nine inches and upwards in the square, all which said oak ash and elm trees were then of considerable value, and in a course of years would have become of much greater value, and ought to have been preserved for the benefit of the several persons to whom the estates in remainder and expectancy after the death of the said defendant M. S. are limited, and particularly for the benefit of *plaintiff* Z. Z. and of *plaintiff* Z. A. who are by virtue of and under the said indenture entitled to estates for life without impeachment of waste in the premises. Whereas the said defendant M. S. is by virtue of and under the said indenture entitled only to a strict and limited estate for her life, and not dispunishable for waste, and therefore the said defendant M. S. hath no right to cut down or apply to her own use any of the oak ash or elm trees standing or growing upon the said premises or any part thereof, nor to commit or do any waste spoil or destruction in the woods growing on the said premises, and *plaintiffs* were therefore in hopes that the oak ash and elm trees so as aforesaid standing and growing on the said premises would have been preserved accordingly, and that no attempt would have been made to cut down or destroy the same, either by the said defendants T. S. and M. his wife, or by any other person or persons by their \*order or for their use. BUT NOW SO IT IS, &c. [*Proceeding as in form IV. p. 5, as far as the word "premises."*] They the said defendants, in order wholly to defeat the intention and true meaning of the said indenture of bargain and sale, and in order to defraud *plaintiffs* of the whole benefit thereby intended for them, have already cut down and caused to be cut down many thousand oak ash and elm trees which were standing upon the said premises at the death of the said Sir S. A., the greater part of which were of the growth of sixty seventy or eighty years, and very few if any of them of less than twenty years growth, and the greatest part of which were thirty feet high, and from six to nine inches square, and fit for several purposes in building, and have actually sold and disposed of the same for £10,000 and upwards, or for some other very considerable sum of money; and have also stripped the bark from a great number of other oak ash and elm trees and other great trees, the greater part of which were of sixty seventy or eighty years growth, and none of them or at least very few under twenty years growth, and are now preparing to fell or cut down all the oak ash and elm trees and all the wood growing and remaining on the said premises as fast as they can, and they the said defendants threaten to sell and dispose thereof for their own benefit. And *plaintiffs* have by themselves and their agents in an amicable manner represented to them that the said defendant M. S. is a strict tenant for life of the premises, and therefore hath no right or title to cut down or take any oak ash or elm trees standing or growing thereon, but merely and only to receive and take the rents and profits of the said premises for the term of her natural life; But the said defendants persist in their resolution in cutting down the said wood indiscriminately, and of converting and applying the same to their own use and benefit; And they pretend that no such deed of bargain and sale as hereinbefore set forth was ever executed by

the said Sir S. A., and that no such recovery as hereinbefore mentioned was ever suffered; but on the contrary they the said defendants insist that by virtue of or under some settlement made previously to her marriage with the said Sir S. A. the said defendant M. S. and the defendant T. S. in her right is and are entitled to an estate for life in the premises without impeachment of waste, and therefore the said defendants contend and insist that they have a good right and title to cut down the said oak ash and elm trees and convert the same to their own use. Whereas *plaintiffs* expressly charge that such indenture of bargain and sale between such parties and to such purport and effect as before set forth was actually executed by the said Sir S. A., and that in pursuance thereof such recovery as before set forth was actually suffered, and that no settlement whatsoever ever was made or executed of the said premises by the said Sir S. A. other than and except the said indenture of bargain and sale; and so the said defendants will at other times admit. But then they pretend that subsequently to the execution of the said indenture of bargain and sale, and in pursuance of the power and authority therein and thereby reserved to the said Sir S. A., he the said Sir S. A. in his life-time by some deed or instrument in writing or by his last will and testament in \*writing attested in such manner as by the said indenture of bargain and sale is required, actually revoked and made void all and every the uses estates and matters and things in and by the said indenture of bargain and sale appointed limited directed and contained concerning the said manors lands tenements and hereditaments, and thereby limited devised and disposed of the same to or in trust for the said defendant M. S. and her heirs for ever or limited or gave to her such estate therein as is dispunishable of waste. Whereas *plaintiffs* expressly charge that the said Sir S. A. never in any manner revoked the said indenture of bargain and sale, but that the same remains wholly unrevoked and in full force and virtue. And *plaintiffs* further charge that all and every the trees standing and growing upon the said premises at the decease of the said Sir S. A. so as aforesaid barked and stripped by the said defendants are thereby rendered incapable of vegetation and will inevitably perish unless the same are cut down. And therefore *plaintiffs* have applied to defendants and requested them to permit and suffer the timber trees so as aforesaid barked and stripped by them to be cut down and sold and disposed of, and that the moneys arising by the sale thereof together with the moneys which have arisen from the sale of the timber trees heretofore cut down ought to be laid out in the purchase of lands and tenements to be settled to the like uses with the lands and tenements comprised in the said indenture of bargain and sale. And for that purpose *plaintiffs* have requested the said defendant T. S. to come to a just and fair account with them for all sums of money had received and taken by him or by any other person or persons by his order or for his use on account of the timber trees so as aforesaid cut down by him, and to pay the same to some person to be laid out accordingly. But the said defendants absolutely refuse to comply with such requests, and persevere in their

ture of bargain and sale was ever made or recovery suffered. That under a former settlement M. S. is a tenant for life without impeachment of waste, and that they have a right to cut down the trees. Charge that the indenture was executed, and the recovery suffered, and no other settlement made. Pretence that the settlor executed the

[ \*356 ] power given to him of revoking the uses, and appointed the estates to his wife M. S. in fee, or limited to her an estate dispunishable of waste. Charge that the indenture of bargain and sale was never revoked. That the trees which have been barked are rendered incapable of vegetation; That *plaintiffs* have applied to the defendants to permit the same to be cut down, and that the produce thereof together with the produce of the trees before felled might be laid

out in the purchase of lands to be settled to the like uses.

Also applications made to the defendant T. S. to account for the produce of the trees felled.

And refusals to comply therewith.

Charge that T. S. is a person of small fortune, and is permitted to cut down the trees he will not be able to answer for the value, and the plaintiffs will be left without remedy.

[ \*357 ]

That the defendants ought to account.

And be restrained from cutting down any trees, or committing waste.

said scheme and design of converting the whole of the said timber and timber trees to their own use. And *plaintiffs* further charge that defendant T. S. is a person of small fortune and therefore *plaintiffs* have great reason to apprehend that in case he the said defendant shall be permitted to cut down sell and dispose of the said timber and timber trees now standing and being on the said manors, &c. the whole moneys arising by the sale thereof will be actually dissipated and lost, and that *plaintiffs* when they shall respectively become entitled to the possession of the said premises, will be left destitute of any remedy for the recovery of the value of such timber, therefore *plaintiffs* are advised and insist that defendants ought in equity to be compelled to come to a just and fair account with *plaintiffs* for all and every sum and sums of money had received and taken by them or either of them or any other person or persons by their or either of their order, or for their or either of their use on account of the sale of such timber trees; and that the same ought in equity to be laid out in the purchase of lands and tenements to be limited and settled to the like uses to which the said lands and tenements are limited in the said settlement; and that in the mean time the said defendants ought to be restrained by the injunction of this honorable court from cutting down barking felling or disposing of the timber trees growing on the said premises, and \*from committing any further waste thereon. All which actings, &c. [see form VI. p. 5, *interrogating to the stating and charging parts.*]

And that the said defendants may answer the premises, and may be decreed to account for all and every sum and sums of money had received or taken by them or either of them or by any other person or persons by their or either of their order or for their or either of their use, for or on account of the sale and disposition of the timber trees cut down or sold by them or by their order; and that such sum or sums of money as shall upon such account appear to have been received by the said defendants or either of them or any other person or persons by either of their order or for their or either of their use, may be decreed to be paid into the bank with the privity of the accountant-general of this court, by a short day to be appointed by this court; and that the several timber trees barked and stripped by the said defendants or by their order may be decreed to be felled or cut down and sold and disposed of; and that the money arising by the sale thereof may in like manner be paid into the bank with the privity of the said accountant-general; and that the moneys so to be paid in by the said defendants as well as the money which shall arise by the sale of such barked timber trees may be laid out in the purchase of lands and tenements or otherwise as the court shall direct, to be limited and settled to such uses and for the benefit of such persons respectively as the lands and tenements comprised in the said indenture of bargain and sale are limited and settled; and that in default of payment by the said defendants of such sum as upon the account so to be taken shall appear to be coming from them to the estate of the said Sir S. A., and for the benefit of the persons who may hereafter become entitled thereto under the said settlement then and in that case that the said defendants may be compelled to



answer and satisfy the same by and out of the rents and profits of the said estates till the whole of such sum of money shall be duly answered and satisfied; and that for that purpose a receiver may be appointed of the rents and profits of the said estates, and that such receiver may be directed from time to time to pay such rents and profits into the bank with the privity of the accountant-general to be placed to the credit of this cause; and that the same when paid in may by the order of this court be decreed to be laid out in the purchase of lands and tenements or otherwise as this court shall direct, to be limited and settled to such uses and for such purposes as hereinbefore mentioned; and that in the mean time the said defendants may be restrained by the injunction of this honorable court from cutting down, felling, barking or otherwise wasting or impairing any timber trees standing and growing on the said manors and estates comprised in the said deed of bargain and sale, and from committing any waste or spoil on the said estates and premises or any part thereof. [*And for general relief, see form VIII. p. 5.*]

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*For* BILLS TO CARRY THE TRUSTS OF WILLS INTO EXECUTION,  
*vide antea*, p. 213, 221.

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### \*CHAPTER III.

[ \*358 ]

#### ORIGINAL BILLS NOT PRAYING RELIEF.

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Original Bills not praying relief are of two kinds: (1)

- I. A bill to perpetuate the testimony of witnesses.
- II. A bill for discovery of facts resting within the knowledge of the person against whom the bill is exhibited, or of deeds, writings or other things in his custody or power.

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#### SECT I.

##### BILL TO PERPETUATE THE TESTIMONY OF WITNESSES.

Courts of equity do not entertain bills to perpetuate testimony generally, for the purpose of being used upon a future occasion, unless where it is absolutely necessary to prevent a failure of justice. (2) If it be possible that the matter in question can, by the

(1) *Ld. Red. Tr. Pl.* p. 34, 51, 4th edit.

(2) *Bellamy v. Jones*, 3 Ves. 31; *Shelley v. —*, 13 Ves. 56, 2d edit.; see also *Angell v. Angell*, 1 Sim. & Stu. 89; *Ld. Red. Tr. Pl.* p. 51, and 149, 4th edit.

[ \*359 ]

party who files the bill, be made the subject of *immediate* judicial investigation, no such suit is entertained. But if the party who files the bill can, by no means, bring the matter in question into present judicial investigation, (which may happen where his title is in remainder,(3) or where he is himself in possession and only threatened with disturbance and not actually disturbed,(4)) there courts of equity will entertain such a suit, for otherwise the only testimony which could support the plaintiff's title might be lost by the death of his witnesses. Where he is himself in possession, the adverse party might purposely delay his claim with a view to that event. It is therefore ground of demurrer to a bill to perpetuate testimony generally, that it is not alleged by the plaintiff that the \*matter in question cannot be made by him the subject of present judicial investigation.(5)

But courts of equity do not merely entertain a jurisdiction to take or preserve testimony generally, to be used on a future occasion, where no present action can be brought, but also to take and preserve testimony in special cases in aid of a trial at law, where the subject admits of present investigation,(6) but before in the regular course of proceedings the witnesses can be examined, their testimony is likely to be lost:(7) thus, where there is only one witness to examine on which the plaintiff's claim depends, or although there are several witnesses, if they are aged, or too ill or infirm to attend in a court of law, and their testimony therefore in danger of being lost before the time of trial:(8) and it ought to be stated in the bill that the action was commenced before the same was filed.(9) At law no commission to examine witnesses who are abroad for the purpose of being used at a trial can go without the consent of the adverse party; but courts of equity will upon a bill filed grant a commission without such consent.(10) Where a present action may be brought, a bill for a commission to examine witnesses abroad in aid of a trial

(3) *Lord Dursley v. Fitzhardinge Berkeley*, 6 Ves. 251, 9.

(4) *Duke of Dorset v. Girdler*, Pre. Cha. 531.

(5) *Angell v. Angell*, 1 Sim. & Stu. 89.

(6) *Angell v. Angell*, 1 Sim. & Stu. 83, 90.

(7) *Sir Radnus Bagnold v. Green*, Cary's Rep. 67, 8; Anno. 2 Eliz. S. C. 1 Dick. p. 2; 2 Madd. Ch. Pr. 251; Ld. Red. Tr. Pl. p. 150.

As to the distinction between the examination of witnesses *de bene esse*, and for perpetuating testimony, see 1 Ves. & B. 139, 140; *Frere v. Green*, 19 Ves. 319.

(8) See 19 Ves. 321, *Anon.*; Madd. Ch. Pr. vol. i. p. 186, 8; vol. ii. p. 251; *Et postea*, p. 467.

(9) See note (y), p. 52, Ld. Red. Tr. Pl. 4th edit. An affidavit of the circumstances by which the evidence is in danger of being lost should be annexed, where the object is merely the examination of witnesses *de bene esse*. As to the form of such affidavit, see 2 Madd. Ch. Pr. 252; *Rowe v. —*, 13 Ves. 261; and note (1), to *Hankin v. Middleditch*, 2 Bro. Ch. Ca. edit. by Belt, 640. See also Ld. Red. Tr. Pl. p. 150.

(10) See *Devis v. Turnbull*, 6 Madd. 233; in which case the defendant at law had refused his consent, and had gone out of the jurisdiction; a bill was filed to obtain a commission, and on affidavit of the facts, service upon his attorney at law was ordered to be good service.

Where a bill was filed against infants to perpetuate testimony, and after subpoena served but before appearance they absconded, the plaintiff upon certain terms, was permitted to examine his witnesses *de bene esse*; *Frere v. Green*, 19 Ves. 319.

In *Baskett v. Toosey*, 6 Madd. 261, the Vice Chancellor granted a commission for examination of witnesses at Bencoolen in India, notwithstanding the 13 Geo. 3, c. 63, s. 44.

at law is demurrable to if it do not aver that an action is pending.(11)

A bill may be filed to perpetuate testimony in many cases where a bill could not be brought for relief without waiving penalties; as in *waste*, or in the case of a *forged deed*, or in the case of *insurances*, after commissions to examine witnesses abroad as to fraudulent losses.(12)

In *Gell v. Hayward*,(13) the Lord Keeper said that he would not allow examinations in *perpetuam rei memoriam*, for such trivial things as a *right of common*,(14) or *right of way* or *\*water-course*;(15) or at least not till after a recovery at law.(16) However a bill will lie to perpetuate testimony respecting a *right of common and way*,(17) but if the charges in the bill are *too general* and not sufficiently descriptive of any particular right, a demurrer will hold,(18) for the bill must set out the way exactly, *per et trans*, in the same manner as it ought to be set out in a declaration at law.(19) Such a bill will also lie to prove a *modus*;(20) or a promise which is to be performed after the death of A.(21)

[ \*360 ]

A bill to perpetuate testimony must state the plaintiff's title to the thing in question or his interest in the subject(22)—the matter touching which the plaintiff is desirous of acquiring evidence(23)—the interest which the defendant has, or pretends to have or claim to contest the title of the plaintiff in the subject of the proposed testimony(24)—that the witnesses are aged and infirm,(25) and likely to die before the time of trial can arrive,(26) or that they are about to quit the kingdom,(27) or are going to Scotland,(28) or are beyond sea,—or that the facts to be examined to are of great importance, and no other but a single witness, although neither aged nor infirm,(29) or only two witnesses(30) to be examined, is or are privy

(11) *Angell v. Angell*, 1 Sim. & Stu. 91.

(12) *Earl of Suffolk v. Green*, 1 Atk. 450; 1 Madd. Ch. Pr. 191.

(13) 1 Vern. 312; 1 Madd. Ch. Pr. 191.

(14) *Pawlet v. Ingrey*, 1 Vern. 108. And see *Crisset v. Mitton*, 1 Ves. jun. 448, 2d edit. S. C. 3 Bro. Ch. Ca. 479.

(15) *Duke of Dorset v. Girdler*, Pre. in Ch. 531.

(16) *Pawlet v. Ingrey*, 1 Vern. 308; so wherever a matter is properly triable at law as a question of title; *Bechinal v. Arnold*, 1 Vern. 354, on a plea of purchase without notice; *Parry v. Rogers*, 1 Vern. 441, on demurrer; and see *Cox v. Colley*, 1 Dick. 55.

(17) See 1 Ves. & B. 139.

(18) *Crisset v. Mitton*, cited supra, note (14).

(19) *Gell v. Hayward*, 1 Vern. 312.

(20) *Somerset v. Frotherby*, 1 Vern. 184.

(21) 1 Madd. Ch. Pr. 191; 2 Com. Dig. 471; 1 Rol. 383, C.

(22) *Lord Dursley v. Fitzhardinge Berkeley*, 6 Ves. 251; *Allan v. Allan*, 15 Ves. 130.

(23) The facts must be particularly stated; *Bartlett v. Hawker*, cited 1 Madd. Ch. Pr. 193; and see *Knight v. Knight*, 4 Madd. Rep. 1.

(24) *Lord Dursley v. Fitzhardinge Berkeley*, 6 Ves. 251.

(25) A witness is not, for the purpose of this bill, considered old unless he is *seventy* years of age; *Pitshugh v. Lee*, Amb. 65; and see *Frithard v. Gee*, 5 Madd. 364; *Philips v. Carew*, 1 P. Wms. 117, 6th ed.

(26) See *Bellamy v. Jones*, 8 Ves. 30.

(27) *Shelley v. —*, 13 Ves. 57; (but not if they are the plaintiff's servants; Bunb. 320.)

(28) *Botts v. Verelat*, 2 Dick. 454.

(29) *Shirley v. Earl Ferrers*, 3 P. Wms. 77, 6th ed.; *Pearson v. Ward*, 1 Cox, 177; *Hankin v. Middleditch*, 2 Bro. Ch. Ca. 640.

(30) *Lord Cholmondeley v. Lord Oxford*, 4 Bro. Ch. Ca. 156; S. C. MS. referred to in note (1). 2 Bro. Ch. Ca. ed. by Belt, p. 640.

to such facts whereby the plaintiff is in danger of losing his or their testimony; and as before observed, a bill to perpetuate the testimony of witnesses generally, ought also to state that the facts about which the witnesses are to be examined, cannot be immediately investigated in a court of law. A commission is then prayed to examine the witnesses, to the intent that their testimony may be preserved, and a subpoena is also prayed to the parties interested to show cause, if they can, to the contrary; but the bill should pray no other relief.(31)

If the defendant show cause to the contrary within fourteen days, the plaintiff is not allowed to proceed.(32)

[ \*361 ] \*After the bill is filed, the court on an affidavit verifying the facts stated in the bill,(33) and that the witnesses are material, will on motion or petition(34) grant a commission if the witnesses live in the country or beyond sea.(35) If they reside within ten miles of London, it will order them to be examined in court *de bene esse*, saving just exceptions to the other side, which will make their depositions valid in their cause only, and against those who are parties to it, and all claiming through, or under some or one of them(36) whose interest has accrued since the bill was preferred; but the depositions must not be taken *ex parte*, *without notice*.(37)

A bill to perpetuate testimony may be dismissed for want of prosecution, any time before replication and examination of witnesses; but after the witnesses are examined, the cause must not be set down to be heard; if it is, it will be dismissed with costs, but so as not to prejudice the plaintiff in perpetuating the testimony of the witnesses.(38)

With respect to *costs*, they are never given against the defendant,(39) and he is entitled to his costs immediately after the commission is returned, notwithstanding he may have *cross-examined* the plaintiff's witnesses,(40) provided he (the defendant) did not examine any witness.(41)

(31) *Rose v. Gannel*, 3 Atk. 439, on demurrer; *Vaughan v. Fitzgerald*, 1 Scho. & Lefr. 316; 2 Vent. 366.

(32) 1 Madd. Ch. Pr. 187; 2 Com. Dig. 471.

(33) See Ld. Red. Tr. Pl. 52, 150, 4th ed.

(34) *Phillips v. Carew*, 1 P. Wms. 117, 6th ed.; 1 Madd. Ch. Pr. 187.

(35) In *Hall v. De Tastet*, 6 Madd. 269, the Vice-Chancellor held that where the commission is returnable on a day certain, an order cannot be made to extend the time.

(36) 1 Madd. Ch. Pr. 188; 2 Com. Dig. 472.

(37) *Loveden v. Milford*, 4 Bro. Ch. Ca. 539; and note (1) to *Hankin v. Middleditch*, 2 Bro. Ch. Ca. ed. by Belt, p. 640; *Bellamy v. Jones*, 8 Ves. 30. See further on this subject, and as to the publication of depositions, 1 Madd. Ch. Pr. 188; *Teale v. Teale*, 1 Sim. & Stu. 385; *Corbett v. Corbett*, 1 Ves. & B. 335; *Gordon v. Gordon*, 1 Swanst. 166, 171; *Bradley v. Crackenthorpe*, 1 Dick. 182; *Morrison v. Arnold*, 19 Ves. 669.

(38) *Anon.* Ambl. 237; *Morrison v. Arnold*, 19 Ves. 671.

(39) *Clifton v. Orchard*, 1 Atk. 610. [What is said in 2 Atk. p. 167, is not now the rule.]

(40) *Vaughan v. Fitzgerald*, 1 Scho. & Lefr. 316.

(41) See 1 Madd. Ch. Pr. 195; *Foulds v. Midgley*, 1 Ves. & B. 138, 140, n. (1); Beames on Costs, 31.

CXXX. *Bill by a devisee in fee in possession, to perpetuate the testimony of the witnesses to the will.*

To, &c.

Humbly complaining sheweth unto your lordship your orator T. H. of, &c. brother of the half blood and devisee named in the last will and testament of T. R. of, &c. deceased, That the said T. R. was in his life-time and at the time of his death seised or entitled to him and his heirs of or to divers freehold and copyhold manors, messuages, farms, lands, tenements and hereditaments situate in the several places hereinafter mentioned and divers other places, of considerable yearly value in the whole, and being seised or entitled and having duly surrendered the copyhold parts thereof to the use of his will, and being of sound and disposing mind, memory and understanding, he made his last will and testament in writing bearing date, &c., which was duly executed by him in the presence of and attested by three credible persons, and which will with the attestation thereof, is in the words following (that is to say;) [*stating the will verbatim.*] And your orator further sheweth that the said T. R. afterwards, and on or about — departed this life without revoking or altering his said will or any part thereof, whereupon your orator by virtue of the said will, became entitled in fee-simple to all his said freehold and copyhold estates, subject as to such part thereof as aforesaid to the payment of so much of the funeral expenses, debts and legacies of the said T. R. as his personal estate may fall short to pay; and your orator accordingly, soon after the death of the said T. R. entered upon and took possession of all the said estates, and is now in possession and receipt of the rents and profits thereof and in the possession and enjoyment thereof. And your orator well hoped that he and his heirs and assigns would have been permitted to enjoy the same quietly without any interruption from any person whomsoever. BUT NOW SO IT IS may it please your lordship that T. H. of, &c. who claims to be cousin and heir at law of the said T. R. alleging that he is the only or eldest son of T. H. and M. his wife, both deceased (which said M. H. as is also alleged, was the only child of S. R. who as is likewise alleged, was the only brother of the father of the said T. R. that left any issue) combining and confederating with divers persons unknown to your orator pretends that the said T. R. did not make such last will and testament in writing as aforesaid, or that he was not of sound and disposing mind and memory at the making thereof, or that the same was not executed in such manner as by law is required for devising real estates; and therefore he insists that your orator hath not any right or title to the real estates late of the said T. R. or any part thereof, but that on his death the same descended unto him the said T. H. as his heir at law. Whereas your orator charges the contrary of such pretences to be true. But nevertheless the said T. H. refuses to contest the validity of the said will during the life-time of

Testator seised of freehold and copyhold estates.

Will of the testator.

His death without revoking the same.

Plaintiff became entitled as devisee in fee, and took possession of the estates.

Claims set up on the part of the heir at law.

Pretending that no will was made or was not duly executed, and that testator was of unsound mind.

Charge the contrary.

\*the subscribing witnesses thereto, and he threatens that he will hereafter dispute the validity of the said will when all the subscribing witnesses thereto are dead, whereby your orator and his heirs and assigns will be deprived of the benefit of their testimony. All which pretences of the said confederate are contrary to equity and good conscience, and tend to injure and oppress your orator in the premises, In consideration whereof and forasmuch as your orator cannot perpetuate the testimony of the subscribing witnesses to the said will without the assistance of a court of equity. To THE END therefore that, &c.(42) [*Proceed as in form VI. p. 5, interrogating to the statements.*]

Prayer.

And that your orator may be at liberty to examine his witnesses with respect to the execution and attestation of the said will, and sanity of mind of the said T. R. at the making the same, so that their testimony may be perpetuated and preserved. May it please, &c., [*see form No. 1, p. 6, and note (o), ibid.*]

W. A.

*Pray subpoena against T. H.*

*Observations.*—Bills to perpetuate the testimony of witnesses are only proper where the plaintiff by being in possession and undisturbed, has no opportunity of asserting or trying his right at law. But where the defendant is in possession or has disturbed plaintiff, they are not proper, because plaintiff may have a remedy at law.

N. B. In the words of course omit the words “order and decree.”

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\*CXXXI. *Bill by a devisee, tenant for life, and the devisees in remainder, to perpetuate the testimony of witnesses to the will.*

To, &c.

Testator seised of freehold and copyhold estates.

Humbly complaining show unto your lordship your oratrixes and orators B. B. of, &c. widow and sole executrix of R. B. deceased (the testator hereinafter named,) J. H. of, &c. and S. his wife, — H. of —, and M. his wife, and — B. of — spinster, That the said R. B. being in his life-time and at the time of making his will hereinafter mentioned and at the time of his death seised in fee of the freehold estates, and also possessed of and entitled according to the custom of the manor of T. D. in the county of S. to the copyhold estates of inheritance in his said will mentioned, and also of certain other freehold and copyhold estates, and also of considerable personal estate, and being minded to dispose of the same, and having duly surrendered his said copyhold estates according to the custom

(42) As the only object of this bill is to perpetuate testimony, the interrogating part seems unnecessary; see 6 Ves. 263: the following form may be adopted instead:—

“To THE END therefore that the said T. H. and his confederates may set forth if they can why your orator should not have the said witnesses examined.” And that your orator may, &c.

\*of the said manor to the use of his will, did on or about the 18th day of June——, duly make and publish his last will and testament in writing duly executed and attested so as to pass lands of inheritance, in the words and figures following (that is to say:) “This is the last will and testament of me R. B. of, &c. which I make and publish for the disposal of all my worldly substance estate and effects whatsoever, in manner and form following (that is to say:) first I give devise and bequeath unto my dear wife B. B. all that my messuage tenement or farm called ——, and all other my freehold and fee-simple lands lying in the said county of S., and also all my customary and copyhold lands of inheritance situate and being within the parish of ——, being parts and parcels of the manor of T. D. in the said county or elsewhere within the said manor, and which said customary or copyhold lands I have surrendered into the hands of the lord of the said manor to the uses of this my will, To hold all and singular my said freehold and customary messuages or tenements lands hereditaments and premises with their respective appurtenances unto my said wife B. B. for and during the term of her natural life, without impeachment of or for any manner of waste, she rendering therefor all rents reparations suits and services due and to grow due to the lord of the said manor of T. D. for the time being in respect of the said customary lands during the said term, and I do hereby subject and charge all and singular my said freehold and customary messuages tenements lands hereditaments and premises hereinbefore devised, with the payment of all my just debts; and from and immediately after the death of my said wife B. B. I do hereby give devise and bequeath all and singular the said freehold and customary messuages or tenements lands hereditaments and premises unto and amongst my son R. B. and to my daughters Sarah (the wife of J. H.) M. (the wife of W. H.) and my daughter T. for such estate and estates and in such shares parts and proportions manner and form as she my said wife shall at any time or times during her life by any deed or instrument in writing under her hand or seal duly executed and credibly attested, or by her last will and testament in writing, or any writing purporting to be her last will and testament to be by her signed sealed and published in the presence of three or more credible witnesses, and whether she shall be sole or married, direct limit give or appoint the same; and in default of such direction limitation gift or appointment by my said wife then unto and amongst all and every my said children R. S. M. and T. share and share alike as tenants in common and not as joint tenants, and to their respective heirs for ever: All the rest and residue of my goods and chattels money securities for money household goods stock and all other my personal estate and effects whatsoever and wheresoever, and of what nature kind or quality soever the same may be, and not hereinbefore disposed of, after payment of my funeral expenses, I give and bequeath the same and every part thereof unto my said dear wife B. B. her executors administrators and assigns, to and for her and their own use and benefit absolutely; and lastly I do hereby constitute ordain and appoint my said wife B. B. sole executrix of this my last will and testament.” As by the said will or the probate copy thereof when produced to this

Death of the testator without altering his will leaving R. B. his heir at law and customary heir.

Pretence that will was made, or that the testator was only tenant for life, or was of unsound mind,

or if of sound mind, yet that the will was not duly attested, and that the defendant is entitled as heir to the testator.

\*honorable court will appear. And your oratrixes and orators further show unto your lordship that shortly after making the said will, and on or about the — day of —, —, the said R. B. departed this life without revoking or making any alteration in the said will, being at the time of his death seised and possessed of the said freehold and copyhold estates as aforesaid, leaving R. B. of — a defendant hereinafter mentioned his eldest son and heir at law, and heir according to the custom of the said manor. And your oratrixes and orators further show unto your lordship that shortly after the decease of the said testator your oratrix B. B. duly proved his said will in the proper Ecclesiastical Court, and entered into possession of the said freehold and copyhold hereditaments and premises devised to your oratrix B. B. for her life as aforesaid, and has ever since continued and now is in the enjoyment and receipt of the rents and profits thereof. And the said R. B. having duly made and published his last will and testament as and in manner aforesaid, your oratrix and orators well hoped that no attempt would have been made against the quiet and peaceable enjoyment of the premises devised by the said testator's will, according to the dispositions of the said will, as in justice and equity ought to have been the case. BUT NOW SO IT IS may it please your lordship that the said R. B. your oratrix's son, and the heir at law and customary heir of the said testator, combining and confederating to and with divers persons to your oratrixes and orators at present unknown, whose names when discovered your oratrixes and orators pray they may be at liberty to insert as parties defendants, in order to defeat and defraud your oratrixes and orators of the benefit of the said testator's will and the premises thereby devised, sometimes pretends that the said testator R. B. never made and published such will as aforesaid, or that if he did he was only tenant for life of the said premises so devised to your oratrixes and orators, and therefore had no power to dispose of the same, or that he was not of sound and disposing mind memory and understanding at the time of making his said last will as aforesaid, and therefore pretends that the devises and bequests in the said will are invalid, and at other times the said confederate R. B. pretends that in case his said father was of sound and disposing mind when he made published and declared his said will, yet that the witnesses thereto did not respectively subscribe their names as witnesses thereto in his presence, and so the said will is void; and that he the said R. B. as heir at law and customary heir to his said father hath a good right and title to the premises by the said will devised, but he refuses to contest the validity of the said will during the life-time of the subscribing witnesses thereto; and he threatens that when the witnesses to the said will are dead he will contest the same and the validity thereof, and set up his title as heir at law and customary heir to the said devised premises. Whereas your oratrixes and orators charge that the said testator was of sound and disposing mind memory and understanding at the time of making his said will, and that the same was duly signed executed and attested in such manner as by law required for passing of real estates, but by means of such pre-



tences on the part of the said confederate your oratrixes and orators cannot \*be quieted in the possession of the said devised premises under and by virtue of the said will. All which pretences of the said confederate are contrary to equity and good conscience, and tend to injure and oppress your oratrixes and orators in the premises, In consideration whereof and forasmuch as your oratrixes and orators cannot examine their witnesses or have their testimony preserved in proof of the said will without the aid and assistance of this honorable court. To THE END therefore that, &c.(43) [ \*366 ]

And that your oratrixes and orators may have the witnesses to the Prayer. said will examined and their testimony recorded in this honorable court, in order to the perpetuity thereof, so that your oratrixes and orators may have the benefit thereof at any time when there shall be occasion. May it please, &c. [see form No. 1, p. 6, and note (o), *ibid.*]

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\*CXXXII. *Bill by a devisee tenant for life and his eldest son tenant in tail in remainder, to perpetuate the testimony of witnesses to the identity of the tenant for life as being the person described in the testator's will, and thereby directed to take the testator's surname.*

To, &c.

Humbly complaining sheweth unto your lordship your orators J. B. the elder of, &c. (lately called J. P.) and J. B. the younger of the same place esquire.

That O. P. late of, &c. deceased was in his life-time and at the time of his death, and also at the time of making his will hereafter stated, seised or entitled in fee-simple of or for some good and sufficient estate of inheritance of or to divers freehold messuages lands tenements and hereditaments in England, and being so seised or entitled the said O. P. when of sound and disposing mind memory and understanding duly made and published his last will and testament in writing bearing date, &c. (which was duly executed for devising and passing real estates,) and thereby gave and devised unto or for the benefit of your orator J. B. the elder by the name and description of, &c. divers freehold messuages lands tenements and hereditaments therein mentioned for his life, with remainder to his first and all and every other son and sons severally and successively in tail. And the said testator thereby directed that your said orator J. B. the elder should take and assume the surname of B. As in and by the said will or the probate thereof reference being had thereto when produced will more fully appear. Testator seised of freehold estates.

That the said testator departed this life soon after making his said will without revoking or altering the same, leaving your orator J. B. the elder (who at that time resided in F. and was an infant of tender years) surviving him. And soon after his death your orator His will.

Death of testator, without altering his will.

\*J. B. assumed and took upon himself the surname of B. in compliance to the directions of the said will, and hath ever since used and still continues to use the same.

Plaintiff J. B. the elder then an infant became entitled as tenant for life;

That upon the death of the said testator your orator J. B. the elder became under and by virtue of his said will seised or entitled as tenant for life in possession of or to the said messuages lands tenements and hereditaments so devised as aforesaid, and your orator J. B. the elder was accordingly soon after the said testator O. P.'s decease sent for from France; and by reason of your said last-mentioned orator's then tender age, great care was taken to have your said last-mentioned orator's person duly and properly identified, and divers good and effectual testimonials were brought over with him from France to London; and upon your said last-mentioned orator's attaining the age of twenty-one years he was let into the possession of all the said estates lands and hereditaments, and hath ever since continued and still is in the possession or receipt of the rents and profits thereof.

And upon attaining his age of twenty-one years was let into possession of the estates.

Plaintiff J. B. the elder's eldest son entitled as tenant in tail.

That your orator J. B. the elder hath issue your orator J. B. the younger his eldest son, and as such your orator J. B. the younger is seised of or entitled to all the said estates and hereditaments as tenant in tail expectant on the determination of your said orator J. B. the elder's estate for life therein; and being so seised or entitled as aforesaid, your orators well hoped that their right and title to the said estate and premises would not have been in any manner disputed as in justice and equity ought to have been the case. BUT NOW SO IT IS may it please your lordship that R. A. of, &c. and J. his wife (late J. P. spinster) have lately set up a claim to the said estate lands and hereditaments in right of the said J. A. as the heiress at law of the said testator, under a pretence that your orator J. B. the elder was not nor is the person meant and described in and by the said will by such name and description as aforesaid, and to whom the said estates and hereditaments were devised for life in manner aforesaid, and that no such person as named and described in the said will in manner aforesaid was or is in existence or can be found: and that therefore the said estates and hereditaments did on the said testator's death descend to his heir at law, and that the said J. A. as heiress at law of the said testator, became and now is seised thereof or entitled thereto. And the said R. A. and J. A. his wife having lately brought a writ of right in his majesty's Court of C. P. at Westminster to recover possession of the said estates. And your orators charge that there are divers aged persons now living (particularly one A. D. widow) some of whom reside in F. or elsewhere abroad who can prove divers matters and things tending to show and prove the identity of your said orator J. B. the elder; and that he is the same identical person who was meant and was named and described in manner aforesaid in the said will. And the said R. A. and J. his wife allege that if such persons shall die or go abroad and your orators be deprived of the benefit of their testimony, they will persist in and prosecute their said claim to the aforesaid estates or disturb your orators or one of them in the possession thereof. And your orators therefore humbly insist that they are entitled to have their

Pretence that J. B. the elder is not the person meant in the will, and that the estates descended to the testator's heir at law, and that the defendant J. A. is entitled thereto, and that she and her husband have brought a writ of right.

Charge that aged persons are living abroad who can prove the identity of the plaintiff J. B. the elder as being the person named in the will.

\*several witnesses who can prove any matters or things tending to show or prove that your orator J. B. the elder is the same identical person who was meant and described in manner aforesaid and to whom the said estates were devised in and by the said will examined in regard thereto, *in perpetuam rei memoriam* and to have their testimony preserved and perpetuated in this honorable court, and to have the full benefit of the testimony of such witnesses as against the said R. A. and J. his wife upon any trial or trials at law which may be had in regard to your orator's title to the said estates; and to have one or more commission or commissions (if necessary) issued out of his honorable court for the examination of such of your orators' said witnesses as may reside abroad. In consideration whereof and forasmuch as your orators are unable at present to have their said witnesses examined in chief on any trial at law respecting the matters aforesaid and may by death or otherwise be deprived of the benefit of their testimony, To THE END therefore that, &c.(44)

And that your orators may have all their several witnesses who can prove any matters or things tending to show or prove that your orator J. B. the elder is the same identical person who was meant and described in manner aforesaid, and to whom the said estates were devised in and by the said will, examined in regard thereto in *perpetuam rei memoriam*. And that their testimony may be preserved and perpetuated in this honorable court so as that your orators may respectively have the full benefit thereof as against the said R. A. and J. his wife upon any trial or trials at law which may be had in regard to your orators' aforesaid title to the said estates or any parts or part thereof. And that your orators may have one or more commission or commissions issued out of this honorable court for the examination of such of their said witnesses as reside abroad. May it please, &c. [see form No. 1, p. 6, and note (o), *ibid.*]

Prayer.

CXXXIII. *Bill by a tenant in tail in remainder, to perpetuate the testimony of witnesses as to the marriage of his parents and his birth.*

Humbly complaining sheweth unto your lordship your orator C. B. of, &c. an infant under the age of twenty-one years (that is to say) of the age of — years or thereabouts, by A. B. of — his next friend, That B. C. late of — but now deceased, was at the time of making his will hereinafter mentioned and of his death seized of or well entitled in fee-simple to considerable real estates in the several counties, of, &c. and did on or about, &c. duly make and publish his last will and testament in writing which was executed and attested as by law is required for the passing of real estates, and did thereby amongst other things give and devise, &c. And your orator further sheweth unto your lordship that the said B. C. departed this

Testator seized of freehold estates.

His will,

and death

without re-  
voking the  
same.

The first ten-  
ant for life en-  
tered into pos-  
session and  
died without  
issue.

So also the  
second tenant  
for life.

Plaintiff's fa-  
ther now in  
possession as  
tenant for life,

his marriage  
to his first  
wife by whom  
he had three  
daughters; his  
marriage with  
his second  
wife; plaintiff  
the only issue  
of such mar-  
riage and en-  
titled as ten-  
ant in tail in  
remainder.

His title dis-  
puted by the  
three defend-  
ants.

Pretence that  
plaintiff's pa-  
rents were not  
legally mar-  
ried or that plain-  
tiff is not the  
issue of such  
marriage and  
not entitled as  
tenant in tail.  
Charge the  
contrary, and  
the circum-  
stances at-  
tending the  
marriage;

\*life on or about — without having altered or revoked his said will leaving the said W. J. S. E. B. S. and A. B. him surviving, and that upon his death the said W. J. S. entered into and upon the possession of the said estates in the said counties of — so devised as aforesaid, and by virtue of the said will became possessed of the said estates for the said term of — years determinable by his death. And your orator further sheweth unto your lordship that the said W. J. S. afterwards departed this life on or about — without issue male, whereupon the said E. B. S. entered into and upon the possession of the said several estates so devised as aforesaid, and by virtue of the said will became possessed thereof for the like term of — years determinable by his death; and that the said E. B. S. also departed this life without issue male in or about —, and thereupon the said A. B. who was next in remainder to the said estates under the said will entered into and upon the same, and became possessed thereof for the like term of — years determinable upon his death, and hath ever since been and now is in such possession and in the receipt of the rents and profits thereof. And your orator further sheweth unto your lordship that the said A. B. intermarried on or about — with X. Y. his first wife who departed this life on or about — leaving no other issue than — daughters; and that the said A. B. on or about — intermarried in the parish church of — with M. G. of —, his present wife, and that your orator who was born on — is the only issue of that marriage, and under and by virtue of the said will of the said B. C. now is and stands seised to him and the heirs of his body of the reversion or remainder of the said several estates expectant on the determination of the said term of — years now vested as aforesaid in the said A. B. And your orator further sheweth unto your lordship that I. R. Y. of — was the eldest son of Z. Y. in the said will named, and that the said I. R. Y. departed this life on or about — leaving R. M. Y. (one of the defendants hereinafter named) his eldest son, and A. Y. and B. Y. (also defendants hereinafter named) his other sons him surviving. And your orator well hoped that his title as tenant in tail in remainder of the said several estates expectant on the determination of the said term of — years now vested in his said father the said A. B. would in no manner have been disputed. BUT NOW SO IT IS may it please your lordship that the said R. M. Y. A. Y. and B. Y. in concert with each other pretend and insist that the said A. B. and M. G. were not legally married at the time of the birth of your orator, or that your orator was not the issue of such marriage, and that therefore your orator has no such title as tenant in tail as aforesaid. Whereas your orator charges the contrary thereof to be the truth, and that although the said A. B. did from motives of respect to the memory of his late wife for some time conceal his marriage with the said M. B. yet that the said A. B. and M. B. then M. G. spinster, were duly married by license on — at the parish church of — aforesaid by the Rev. R. F. of — who was a particular friend of the said A. B. and M. G., and that such marriage ceremony was performed agreeably to the rites and ceremonies of the Church of England and in the presence of C. D. the curate of the said parish and of C. F.

\*the clerk thereof and F. G. the sister of the said M. G. And your orator further charges that your orator was born on — in the parish of — at a house in which your orator's said father and mother had then for some time resided, and in the presence of Dr. G. a physician of great eminence, and of P. W. who attended your orator as nurse, and of F. the wife of — a respectable publican in the said parish who happened then to be in the house, and the said F. G. the sister of your orator's mother who had lived with her during her pregnancy was also in the house at the birth of your orator in an adjoining room; and that your orator was privately baptized on — by the said R. F., and was afterwards publicly baptized at the parish church of, &c. and the register of your orator's birth was made at the chapel in — street on — in the registry kept therein for the use of protestant dissenters. But nevertheless the said R. M. Y. and B. Y. although they well know the several facts aforesaid yet mean and intend to dispute the validity of your orator's said title to the said estates after the death of the said A. B. when the several witnesses necessary to establish the same are dead many of whom are now infirm and much advanced in years. To THE END therefore, &c. [see form VI. p. 5, and interrogate to the stating and charging parts.]

and the birth of the plaintiff;

first privately baptized and afterwards publicly, and registry made at a dissenter's chapel.

Many of the witnesses aged.

And that the said defendants may answer the premises; and that your orator may be at liberty to examine his witnesses to the several matters and things hereinbefore mentioned, and particularly with respect to the intermarriage of the said A. B. and M. B. the father and mother of your orator and to the birth of your orator after such intermarriage, so that the testimony of the said witnesses may be preserved and perpetuated; and that your orator may be at liberty at all future occasions to read and make use of the same as he shall be advised. May it please, &c. [see form No. 1, p. 6, and note (o), *ibid.*]

Prayer.

J. L.

*Pray subpoena against R. M. Y.  
A. Y. and B. Y.*

#### CXXXIV. *Bill to perpetuate the testimony of witnesses to the boundary of a moor, parcel of the plaintiff's manor.*

States that *plaintiff* now is and for some years hath been seised in fee-simple or of some other good estate of inheritance of and in the manor of R. with its rights members royalties commons wastes and other appurtenances thereunto belonging, situate in, &c. and also of all that tenement or moor with all and singular its members and appurtenances whatsoever heretofore used occupied or enjoyed as parcel or member thereof with all ways wastes and advantages to the same belonging, commonly called or known by the name of H. M., and which is parcel or reputed to be parcel of the manor of R. and situate within the said parish of G. in the said county of —, and

Plaintiff seised of the manor of R. and of a moor, parcel thereof.

Lease granted of the moor by plaintiffs ancestors still subsisting.

Sir F. B. seised of the lands adjoining the moor.

The boundaries between the moor and the defendant's lands.

Pretence that plaintiff is not entitled to the manor of R. but admitting the contrary, the defendants pretend that the boundaries are otherwise than as before described.

Charge as to the enjoyment and boundaries of the plaintiff's estates.

That the

\*which said manor and estates have been held and enjoyed by *plaintiff* and his ancestors or their tenants or under-tenants for a great number of years, and which said tenement called H. M. and some other part of the manor of R. was formerly in the possession of — and lately of —, who severally and successively held the same as under-tenants to J. W., who was and now is entitled thereto under and by virtue of a lease from one of *plaintiff's* ancestors for a long term of years or some other estate or interest which is now subsisting.

That Sir F. B. bart. one of the defendants hereinafter named is seised or entitled in fee-simple or for some other estate in possession of or to a tenement and lands called or known by the name of P. the whole whereof lieth within the parish of C. within the said county of — and adjoins to *plaintiff's* tenement called H. M.

That part of the boundary between *plaintiff's* said tenement or moor called H. M. and Sir F. B.'s said tenement called P. hath been from time to time whereof the memory of man is not to the contrary and now is as follow, that is to say: [*state the boundaries,*] and *plaintiff* hoped that on the determination of the present subsisting lease of the said tenement or moor called H. M. under which said J. W. is now entitled to and holds possession of such tenement or moor, the whole whereof according to such ancient boundary would have been delivered up to *plaintiff*, so that *plaintiff* his heirs and assigns might at all times have enjoyed the same from thenceforth according to such ancient boundary. BUT NOW SO IT IS, may it please your lordship that the said Sir F. B. and T. T. the tenant of the said tenement called P. the defendants hereinafter named, combining and confederating with divers persons unknown to *plaintiff* [*see form IV. p. 5,*] *pretend* that *plaintiff* hath not and that neither he nor any of his ancestors ever had any estate right or interest in or to the said manor of R. or the said tenement called H. M. or any part thereof; but at other times admitting the contrary, they *pretend* that the true real and immemorial boundary between *plaintiff's* manor of R. and his tenement called H. M. and defendant's said tenement called P. is not such as hereinbefore set forth, but is as follows, viz. &c. *Charge* that *plaintiff*, and his ancestors have for a long series of years held and enjoyed the said manor of R. and the lands hereditaments and appurtenances thereto belonging, and particularly the said tenement called H. M., and that the whole thereof is lying within the parish of G., and that the true real and immemorial boundary between the same and the said estate or tenement called P. was and is such as is hereinbefore particularly described and no other; and that it is and immemorially hath been constantly so reputed in the neighborhood, and that no part of the land lying on the south-west side of the bed of the ancient river and fence aforesaid belongs to the said Sir F. B. or his said tenement called P., and that the whole of the said tenement of P. lieth within the said parish of C., and so it is mentioned in several deeds and writings relating thereto in the custody or power of the said Sir F. B. and the said Sir F. B. hath no right or interest in any lands belonging to the said tenement called P. within the said parish of G., but the true and real boundary between the

said two tenements having been for several years last past neglected \*to be discriminated by reason that all or most of the particulars of both such tenements have been for a long time held and occupied by the same under-tenants, the said Sir F. B. and T. T. taking advantage of such circumstances, now deny that the real boundary between the said tenements is as hereinbefore mentioned by *plaintiff*, and insist that such boundary is such as is hereinbefore stated to be alleged by them, and consequently that a great quantity of land which is really part of *plaintiff's* said manor of R. and of the said tenement called H. M. is part of the said tenement called P., and that on the expiration or determination of the said lease now subsisting of or in the said tenement called H. M. possession shall be delivered unto *plaintiff* according to the boundary so pretended by them the said defendants. And the said Sir F. B. and T. T. his tenant, in collusion with J. W. *plaintiff's* immediate tenant of the said tenement called H. M. and the under-tenant of said J. W. decline to do any acts or act to bring the question as to the real boundary between the said tenements for a legal determination, well knowing that many persons who are now living and much advanced in years can prove that the boundary is really such as is hereinbefore mentioned and hoping that such persons may die before the expiration of the said lease of the said tenement called H. M. whereby *plaintiff* would be deprived of the benefit of their testimony. All which actings, &c. [see form VI. p. 5, interrogating to the stating and charging parts.]

boundaries have become confused by reason of the same tenants having held all the lands.  
[ \*372

That the defendants refuse to try the question.

That there are many aged witnesses who can prove the boundaries.

And that *plaintiff* may be at liberty to examine his witnesses to the several matters and things hereinbefore mentioned, and particularly respecting the boundary between the said tenement called H. M. and the said tenement called P.; And that *plaintiff* may be at liberty on all future occasions to read and make use of the same as he shall be advised. May it please, &c. [see form No. 1, p. 6, and note (o), *ibid.*]

Prayer.

#### CXXXV. *Introductory statement, and prayer for a commission to examine witnesses abroad.*

And your orators further show unto your lordship that inasmuch as the witnesses to the several transactions aforesaid reside in the said city of H., your orators are unable to proceed to trial of the said action against the said R. T. without a commission from this honorable court for the examination of such witnesses.

And that your orators may be at liberty to sue out one or more commission or commissions for the examination of their witnesses at H. or elsewhere in parts beyond the seas touching the matters aforesaid; and that your orators may have the benefit of the testimony of such witnesses respectively in the said action so commenced by them as aforesaid, or in any other action to be com-

Prayer.

\*menced by your orators on the said policy of assurance. May it please, &c.

J. L.

*Another form of prayer.*

And that a commission may issue for the examination of witnesses residing in parts beyond the seas, as to the several matters aforesaid, with all proper and usual directions in that behalf; and that your orators may be at liberty to read and make use of the depositions of such witnesses at law upon the trial of the said action so commenced as aforesaid. May it please, &c.

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SECT. II.

BILLS FOR DISCOVERY.<sup>f</sup>

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As the object of a court of equity in compelling a discovery is either to enable itself or some other court to decide on matters in

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<sup>f</sup>A court of chancery will compel a discovery in aid of a suit at law, where the leading circumstances rest in the knowledge of the defendant, whether the action be founded on contract or tort. *Skinner v. Judson*, 8 Conn. 528; see also, *Peck v. Ashley*, 12 Met. 478; *Bennett v. Wolfolk*, 15 Geo. 213; the bill must state that the discovery sought is necessary to the defence; *Howell v. Ashmore*, 1 Stockt. (N. J.) 82; *Turner v. Dickerson*, Id. 140; *Bell v. Pomeroy*, 4 McLean, 57; but if the plaintiff seeks to change the forum of litigation, and prays for relief as well as discovery, his bill must show a cause of manifest propriety in the court to retain the case. *Brown v. Edsall*, 1 Stockt. (N. J.) 256.

A defendant in a bill in equity, is not bound to answer for the discovery of property to a later date than that of the filing of the bill. A supplemental bill should be filed for such discovery. *Gregory v. Valentine*, 4 Edw. Ch. 282; *Hope v. Brickenhoff*, 4 Edw. Ch. 348. Nor can he plead payment of a debt before the commencement of the action at law in bar of the discovery sought by the complainant's bill. *Sperry v. Miller*, 2 Barb. Ch. R. 632. Nor will a bill of discovery lie where the same testimony may be had at law, as that sought by the bill. *Hurd v. Duchess County Bank*, 1 Morris, 291; nor where it would render the defendant liable to an indictment, or subject him to a penalty or forfeiture; *Taylor v. Bruen*, 2 Barb. Ch. R. 301; *Adams v. Porter*, 1 Cush. 170; nor will a bill of discovery lie in aid of a defendant at law to compel the plaintiff at law to furnish a more full bill of particulars which the court of law has refused to order. *Nieuwy v. O'Hara*, 1 Barb. 484.

The officers of a corporation may be made parties to a bill of discovery, for the purpose of obtaining a knowledge of facts which cannot be ascertained by the answer of the corporation under the corporate seal, and without oath. *Vermilyear v. Fulton Bank*, 1 Paige, C. R. 37; *Many v. Beekman Iron Company*, 9 Paige, C. R. 188. And trustees can be compelled to account for the trust funds in their hands when the accounts are complicated, and from the facts alleged in the bill it affirmatively appears that a discovery from the defendant is necessary to obtain a decree; *Keaton v. Greenwood*, 8 Geo. 97; and a court of chancery will entertain a bill filed for the discovery of assets, which an administrator has failed to return in his inventory; *Wilson v. Crook*, 17 Ala. 59; *Hunley v. Hunley*, 15 Id. 91; but infants cannot be made parties for discovery merely, where they have no interest, as they never answer on their oaths. *Leggett v. Sellon*, 3 Paige, C. R. 84.

A plaintiff is entitled, on motion, to have produced for inspection, and to be used in aid of his suit, documents in possession of the defendant, or his agents, which are



dispute between the parties, the discovery sought must be material either to the relief prayed by the bill, or to some other suit actually

referred to in the answer without being set forth at large, and are material to the support of the plaintiff's rights, but not for papers to which no allusion is made in the answer. *Robbins v. Davies*, 1 Blatch. Ct. Ct. 238; but a person cannot be allowed to call for the title papers of another, under whom he sets up no title or interest in himself, except that he may possibly at some time find it convenient to use them in an action at law as evidence against those having them in possession, upon a collateral matter. *Baxter v. Farmer*, 7 Ired. Eq. 239. And where a bill is filed for discovery and relief, upon a lost contract, it seems that the defendant will be held to greater strictness in his answer as to the contents of the lost instrument, than would be required if it could be produced. *Crary v. Smith*, 2 Comst. 60.

A bill for discovery and relief may be good, as to the discovery, without an affidavit; *Laight v. Morgan*, 2 C. C. E. 344; and to a bill alleging the loss of an instrument, and seeking a discovery merely, an affidavit is not necessary; *Laight v. Morgan*, 1 Johns. C. R. 429; and where a bill for discovery and relief on the ground of the loss of title deeds, alleged the loss, it was held, that an affidavit by the plaintiff, that the deeds were not in his power or custody, was unnecessary. *Le Ray v. Servis*, 1 C. C. E. 111. It is unnecessary also, in a simple bill of discovery, to allege that the complainant is unable to prove his case at law without the aid of the discovery sought. *Atlantic Insurance Company v. Luna*, 1 Sandf. Ch. R. 91; see also *Duval v. Ross*, 2 Munf. 290; but in *Perrine v. Carlisle*, 19 Ala. 686, where a bill was filed for relief, and the jurisdiction of the court was sought to be maintained on the ground of discovery alone, it was held that the bill should allege that the complainant is unable to prove the fact upon which he relies for relief otherwise than by the answer of the defendant. Where the defendant seeks by petition, in the nature of an injunction to a suit at law, a discovery of matters of defence, such petition must be presented with as reasonable diligence as is required in procuring the testimony of witnesses, and must aver that material facts relied upon are not otherwise susceptible of proof. *Hill v. Cawthorn*, 15 Ark. 29. And where a defendant at law desires a discovery from the plaintiff, he should file his bill, or exhibit interrogatories, whilst the cause is at issue. If, without doing so, he take the chance of success in a trial at law, he must abide its judgment, unless some other special ground of relief is shown, authorizing a resort to a court of equity. *Powell v. Stewart*, 17 Ala. 719.

Where a bill seeks special and general relief, and relief is the principal object, and discovery is sought merely as incidental thereto, a demurrer will lie to the whole bill, if the plaintiff shows no title to the relief sought. *Pool v. Lloyd*, 5 Met. 525. And a court of chancery will not aid a plea of usury at law, by compelling a discovery, unless the defendant in his bill tender the sum really due for principal and lawful interest. *Tupper v. Powell*, 1 Johns. C. R. 439; *Livingston v. Harris*, 11 Wend. 329; *Brockway v. Copp*, 3 Paige, C. R. 539.

A bill for discovery in aid of a defence at law, must state the facts as to which a discovery is required; and it is not sufficient to allege that the matters as to which a discovery is sought, are material to the defence. *Lane v. Stebbins*, 9 Paige, C. R. 622. It is sufficient for the plaintiff to show by his bill that the discovery is material without showing it to be indispensable; *March v. Davison*, 9 Paige, C. R. 580; *Leggett v. Postley*, 2 Id. 599; and where the bill is for discovery, and to stay proceedings in another court, it must allege that the facts cannot be obtained in the suit without such discovery. *Seymour v. Seymour*, 4 Johns. C. R. 409; see also *McIntyre v. Mancius*, 3 Id. 45; *Conant v. Delafield*, 3 Edw. Ch. 201; *Newkirk v. Willett*, 2 C. C. E. 296; *Clapp v. Sheppard*, 23 Pick. 228; *Norwich and Worcester Railroad Company v. Storey*, 17 Conn. 364.

A plaintiff cannot, by exception to an answer, call for a discovery based upon new matter set up in the answer by way of defence; *Stafford v. Brown*, 4 Paige, C. R. 88; and on the trial of a suit at law, the defendant may introduce evidence in addition to an answer to a bill of discovery in aid of his defence. *Williams v. Wann*, 8 Black. 477. A party may sustain a bill for discovery, not only where he is destitute of other evidence to establish his case, but also to aid or render unnecessary such evidence. *Stacy v. Pearson*, 3 Rich. Eq. 148. The joinder of defendants in separate actions in a bill of discovery to obtain evidence, is a defect in substance, and fatal to such bill; *Broadbent v. State*, 7 Md. 416; *McDougal v. Maddox*, 17 Geo. 52; and the court may compel an attorney bringing a great number of suits for different plaintiffs on the same facts, and against one defendant, to disclose the name and residence of the plaintiffs, when required by the defendant's protection. *Ninety-nine plaintiffs v. Vanderbilt*, 4 Duer, (N. Y.) 632.

instituted or capable of being instituted. If therefore the plaintiff in a bill for discovery does not show by his bill a title to sue the defendant in some other court,(1) or that he is actually involved in litigation with the defendant or liable to be so, and does not also show that the discovery which he prays is material to enable him to support or defend a suit, he shows no title to the discovery, and consequently a demurrer will hold.(2)

[ \*374 ]

Where a plaintiff filed a bill for a discovery merely, to support an action which he alleged by his bill he intended to commence in a court of common law,(3) although by this allegation he brought his case within the jurisdiction of a court of equity to compel a discovery, yet the court being of opinion that the case stated by the bill was not such as would support an action, a demurrer was \*allowed;(4) for unless the plaintiff had a title to recover in an action at law supposing his case to be true, he had no title to the assistance of a court of equity to obtain from the confession of the defendant evidence of the truth of the case. And upon a bill filed by a creditor alleging that he had obtained judgment against his debtor, and that the defendant in order to deprive him of the benefit of his judgment had got into his hands goods of the debtor under pretence of a debt due to himself, and praying a discovery of the goods, the defendant demurred because the plaintiff had not alleged that he had sued out execution, and because until he had so done the goods were not bound by the judgment, and consequently the plaintiff had no title to the discovery; and the demurrer was allowed.(5)

Unless a defendant has some interest in the subject he may be examined as a witness, and therefore cannot in general be compelled to answer a bill for discovery;(6) for such a bill can only be to gain evidence, and the answer of the defendant cannot be read against any other person, not even against another defendant to the same bill.(7) But if the bill states that the defendant has or claims an interest, a demurrer which admits the bill to be true, of course will not hold, though the defendant has no interest, and he can then only avoid answering the bill by plea or disclaimer.(8) In general where the title of the defendant is not in priority but inconsistent with the title made by the plaintiff, the defendant is not bound to discover the evidence of the title under which he claims.(9)

(1) *Wallis v. The Duke of Portland*, 3 Ves. 494, 503, 2d edit.; *The Corporation of London v. Levy*, 8 Ves. 398; *Lord Kensington v. Mansell*, 13 Ves. 240; and see *Wright v. Plumtre*, 3 Madd. 481.

(2) See *Ld. Red. Tr. Pl. 191*, 4th edit.; *Askam v. Thompson*, 4 Pri. 330; *Cardale v. Watkins*, 5 Madd. 18.

(3) It is not necessary that an action should be brought previously to filing a bill for discovery in support of an action; see *Moodalay v. Morton and the East India Company*, 1 Bro. Ch. Ca. 468; *S. C.* 2 Dick. 34.

(4) *Debigge v. Lord Howe*, cited in *Ld. Red. Tr. Pl. 187*; 3 Bro. Ch. Ca. 155; *Bea. El. Pl. 276*.

(5) *Angell v. Draper*, 1 Vern. 399; and see *Shirley v. Watts*, 3 Atk. 200.

(6) *How v. Best*, 5 Madd. 19; *Dineley v. Dineley*, 2 Atk. 394; *Fenton v. Hughes*, 7 Ves. 287; *Ld. Red. Tr. Pl. p. 188*; where the exceptions to this rule are stated; see also note (11), 1 Ves. jun. 293; 14 Ves. 252; *Wych v. Meal*, 3 P. Wms. 310, and the notes, *ib.*, 6th edit.

(7) *Morse v. Royal*, 12 Ves. 355. 2 Vern. 380.

(8) *Plummer v. May*, 1 Ves. sen. 426.

(9) See *Ld. Red. Tr. Pl. 191*; *Ivy v. Kekewick*, 2 Ves. jun. 679. And see generally in what cases a bill for discovery will lie, 1 Madd. Ch. Pr. 198, et seq.

A bill for discovery will not lie after twenty years adverse possession not accounted for by some disability; although an ejectment might in a particular case be brought by the plaintiff.(10)

Where a party comes only for the *discovery* of a deed, he need not make oath of the loss of it, as he must do when he applies also for *relief*.(11)

The defendant in a bill for discovery is entitled to the costs of discovery immediately upon putting in a full answer,(12) and also to all costs occasioned by resisting motions made in the cause by the plaintiff.(13)

\*There is no distinction as to the time for excepting between bills for discovery and bills for relief.(14) [ \*375 ]

Where a bill prays a discovery and a commission to examine witnesses, the defendant is not entitled to move for his costs till the return of the commission, and even then the defendant will not have his costs if he examines witnesses *in chief*, instead of confining himself to a cross-examination.(15)

If after the defendant has answered the suit becomes abated, it cannot be revived, even for costs.(16)

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CXXXVI. *Bill for discovery in aid of an action at law; the defendant having pleaded a set-off, and inserted items in the particular of such set-off which ought not to have been charged against the plaintiffs, being trustees under a deed of trust executed by two partners in trade for the benefit of their creditors.*

Humbly complaining show unto your lordship your orators P. N. of, &c. J. A. of, &c. and J. R. of, &c. That by indenture of assignment bearing date —, and made between J. G. and J. W. therein described of, &c. of the first part, the several persons who had thereunto set their hands and affixed their seals, creditors of the said J. G. and J. W. as copartners as aforesaid, or of the said J. G. on his own separate account, of the second part, and your orators of the third part; they the said J. G. and J. W. (amongst other things) bargained, &c. [setting out that part showing the assignment to the plaintiffs and particularly the clause which gives them power, to sue.] As in and by, &c. And your orators further show unto your lordship that at the time of the execution of the said indenture,

Deed of assignment executed by J. G. and J. W. for the benefit of their creditors.

A debt of £— due to the as—

(10) *Marquis Cholmondeley v. Lord Clinton*, Turn. Rep. 107.

(11) See *Ld. Red. Tr. Pl.* p. 54, 124, 4th edit.; 1 *Madd. Ch. Pr.* 197, and note (i), *ibid.*; and see *Hook v. Dorman*, 1 *Sim. & Stu.* 227; and note (2), *antea*, p. 169.

(12) See *Cartwright v. Hateley*, 1 *Ves. jun.* 293, where the defendant was allowed costs as between attorney and client; *Coventry v. Bentley*, 3 *Mer.* 677.

(13) *Noble v. Garland*, 1 *Madd. Rep.* 344, on motion for a reference to the master to tax the defendant's costs.

(14) *Bea. on Costs*, 29, 30; *Baring v. Prinsep*, 1 *Madd. Rep.* 526, overruling *Stewart v. Semple*, 5 *Ves.* 86; the time allowed for filing exceptions *nunc pro tunc* is two terms and the following vacation, *Thomas v. Llewellyn*, 6 *Ves.* 823; *Dyer v. Dyer*, 1 *Mer. l.*

(15) *Anon.*, 8 *Ves.* 89; *Banbury v. —*, 9 *Ves.* 103.

(16) *Dodson v. Juda*, 10 *Ves.* 31, and see note (37), *ibid.*

signors from  
the defendant.

Applications  
made to the  
defendant by  
the plaintiffs  
as trustees for  
payment.

Refusal to  
pay.

An action  
commenced  
by the plain-  
tiffs against  
the defendant  
to compel pay-  
ment of the  
amount.

[\*376]

A set-off  
pleaded.

Charge that  
the defendant  
knew or had  
been apprized  
of the assign-  
ment made to  
the plaintiffs.

That the de-  
fendant guar-  
anteed the  
payment of the  
price of cer-  
tain articles of  
copper sold to  
one of the in-  
solvents,  
trusting to his  
personal re-  
sponsibility.

That the de-  
fendant also  
claims in re-  
spect of wages  
paid to one J.  
B. C.

That he has no  
right to such  
demand.

That the  
plaintiffs can-  
not proceed in  
the action  
without a dis-  
covery from  
the defendant.

there was justly due and owing to the said J. G. and J. W. on their partnership account from R. K. of, &c. (the defendant hereinafter named) the sum of £—, being the balance of an account between the said J. G. and J. W., the particulars whereof are set forth in the schedule hereto. And your orators further show that they have repeatedly applied to the said R. K. to pay to them as such trustees as aforesaid the said sum of £—, with which just and reasonable requests your orators well hoped the said defendant would have complied, as in justice and equity he ought to have done. BUT NOW SO IT IS, &c. [*see form IV. p. 5,*] he hath absolutely refused so to do; and your orators have therefore been compelled to commence an action in the names of the said J. G. and J. W. against the said defendant to compel the payment of the said balance; and your orators charge that the said defendant hath \*pleaded a set-off in the said action, and hath delivered a particular of such set-off, which as far as it extends to the date of the said assignment to your orators, corresponds in substance with the creditor side of the account set forth in the said schedule hereto; but the said defendant hath added thereto three articles for copper delivered in the year —, for which he claims credit in the said action. Whereas your orators charge that the said defendant at or about the time of the execution of the said assignment to your orators was apprized thereof, or had some reason to know believe or suspect and did know believe or suspect that the said J. G. and J. W. had made such assignment, or some assignment of their copartnership property to your orators or to some trustees for the benefit of their creditors. And your orators further charge that the said copper was delivered at —, which had belonged to the said J. G. and J. W. and had been comprised in the said assignment to your orators, and had been afterwards sold by your orators to the said J. G.; and the said J. G. applied to the said defendant to purchase the said copper on his the said defendant's credit, or to guarantee the payment for the said copper to the person from whom it was bought, by reason that the circumstance of the assignment to your orators being known, the said J. G. could not obtain credit for the said copper in his own name alone; and the said defendant for that reason lent his credit to the said J. G. for the purchase of the said copper or guaranteed the payment thereof, trusting to the personal responsibility of the said J. G. And your orators further charge that the said defendant hath also added to his said particular of set-off a sum of £— for a year and a half's wages for one J. B. C.; Whereas your orators charge that the said defendant hath no just right to any such demand against your orators as trustees under the said assignment; and the said defendant refuses to set forth how he makes out such his claim, and when and up to what time he computes the said wages. And your orators charge that they are advised that they cannot safely proceed in the said action so commenced by them as aforesaid in the names of the said J. G. and J. W., without a discovery of the circumstances hereinbefore stated from the said defendant. TO THE END therefore that, &c. [*Proceed as in form VI. p. 5, and interrogate to the stating and charging parts.*]

And that the said defendant may set forth how he makes out such his said claim, and when and up to what time he computes the said wages, and whether your orators can safely proceed in the said action so commenced by them as aforesaid in the names of the said J. G. and J. W. without a discovery of the circumstances hereinbefore stated from the said defendant.

Interrogatories for a discovery as to the defendant's claims.

And that the said defendant may make a full and true discovery of all and every the matters aforesaid. May it please, &c. [see form No. 1, p. 6, and note (o), *ibid.*]

Prayer.

J. L.

*Pray subpoena against R. K.*

**\*CXXXVII.** *Bill for discovery in aid of a defence to an action brought for the recovery of a balance of an account claimed by the plaintiff at law to be due to him as agent, in having assisted the plaintiffs in equity, who were the solicitors employed in prosecuting an election petition in parliament.*(17) *The bill also prays for an injunction to restrain proceedings at law in the mean time.* [ \*377 ]

In the Exchequer.

To, &c.

Humbly complaining show unto your honors your orators J. A. of —, T. B. of —, and H. A. also of —, debtors, &c. [see form No. 2, p. 2.] That your orators were in the year — employed as solicitors in supporting the petition of certain freeholders in D. claiming to vote in the election of members of parliament for the county of C. to the House of Commons against the return to parliament of F. R. esq. as a member for the said county of C.; and that Messrs. A. and Y. of — were employed by your orators as their parliamentary agents in preparing and prosecuting such petition; and upon a dissolution of partnership which took place between the said A. and Y., your orators employed Messrs. E. and the said Y. in the prosecution of the said petition, until the termination of all matters relative thereto. And your orators further show that for the purpose of defraying the expenses of preparing and presenting and prosecuting the said petition, subscriptions were made and raised by divers persons freeholders of D. aforesaid, to a considerable amount, but such subscriptions afterwards appeared and actually were very inadequate to defray the expenses attending the said petition. And your orators further show unto your honors that O. O. now of — the defendant hereinafter named (but who in the said year — practised as an attorney and soli-

Plaintiffs employed as solicitors in supporting the petition of certain freeholders to the House of Commons against the return of a member.

A. and Y. employed as parliamentary agents.

Subscriptions raised for defraying the expenses attending the said petition, but the same proved very inadequate.

(17) In *Wallis v. Duke of Portland*, 3 Ves. 164, a demurrer was allowed to a bill for discovery whether the plaintiffs were not employed by the defendants as solicitors to present and prosecute a petition complaining of a return of a member of parliament, principally on the ground that the case stated amounted to maintenance at common law.

The defendant having heard of the petition, and being acquainted with plaintiff J. A. proposed in conversation to assist in the management of the petition. That he was informed that the subscriptions would probably be

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very inadequate, and that the plaintiffs had volunteered their services. That he distinctly stated that he did not wish to be paid for his services in the event aforesaid, but would be content with £20. That his services were accepted upon the understanding that he was only to be repaid money out of pocket.

£50 paid him to defray the current expenses;

And since the decision of the petition £36 more, which was paid by plaintiff J. A. upon the understanding that it was a final settlement of all claims on the part of the defendant.

No claim made for any further sum until lately.

citor in —,) having heard of your orators being engaged in supporting the said petition, and having been acquainted with your orator J. A. for many years, did upon seeing your orator J. A. accidentally at the Grecian Coffee-house in the month of May —, enter into conversation with your orator J. A. upon the subject of the said petition, and the said O. O. then proposed to your said orator to assist in the management of the said petition, stating that he was anxious to get into business of that sort, having a liking for it, or used words to that or the like purport meaning or effect; and your orator J. A. thereupon told the said O. O. that the said petition was supported by subscription amongst the freeholders of D., and that your said orator was afraid that it would not be sufficient \*in amount to defray the fees of counsel and the ordinary expenses of the House of Commons on such occasions and the money out of pocket; and that your orators being respectively freeholders had volunteered their services in support of the petition, and with a view to try the question of right on the part of the freeholders of D., and consequently that there would (as your orator J. A. was afraid) be no fund to pay for the assistance of the said O. O. And your orator J. A. further sheweth that the said O. O. then distinctly and in most unequivocal terms stated that he did not wish to be paid for the assistance he might afford in the event of the subscription being inadequate, and consequently would not make any charge, but that in any event he should consider himself paid by a compliment of £20, or the said O. O. used words to that or the like purport or effect. And your orators further show that upon the express understanding that the said O. O. should not make any charge for his assistance, and that his only desire was to be repaid the money out of pocket, the said O. O. assisted your orators and the several other persons engaged in the said petition in prosecuting the same, and pending the prosecuting the said petition, your orator J. A. paid to the said O. O. the sum of £50 to enable him to defray the current expenses; and since the decision of the said petition your orator J. A. did upon the application of the said O. O. accept a draft for £36 in order as the said O. O. then alleged, to reimburse him the money out of pocket. And your orators further show unto your honors that the said draft was so accepted, and was afterwards duly paid by your orator J. A. upon the understanding and belief that the same was a final settlement of all claims on the part of the said O. O. in respect of or in any wise relating to the said petition, and that the said sum of £36 the amount thereof had been actually expended by the said O. O. out of his own proper moneys. And your orators further show that the said O. O. has never until in or about the month of — last pretended or alleged that any further or other sum of money was due to him for his personal assistance relative to the said petition. And your orators hoped that no proceedings would have been taken by the said O. O. against them to enforce any pretended claims on his part the said O. O. well knowing that he has not any just claims and ought not in justice and equity to make any further claims upon your orators for remuneration for his assistance with regard to the said petition. BUT NOW SO IT IS, &c. [see form IV. p. 5,] he the said O. O. hath lately commenced an

action against your orators in his Majesty's Court of K. B. at Westminster for the recovery of a pretended balance of £500 alleged to be due to him in his character of an attorney and solicitor or agent in respect of the said petition : and he has lately delivered to your orators a bill of costs relating solely to the said petition, and amounting altogether to the sum of £600, thereby charging large sums of money for his advice and attendances and otherwise ; and the said confederate at times pretends that no such conversation as hereinbefore stated ever took place between your orator J. A. and him the said confederate, and that he never promised or agreed to or with your orators or any or either of them not to make any charges for his assistance in the event of the aforesaid subscriptions being inadequate, other than \*such moneys as he should actually pay out of pocket ; and the said confederate further pretends that your orators were frequently, and previously to the said month of May —, in the habit of employing him as their agent in matters of business, and that your orators have frequently both by letter and otherwise promised and agreed to pay the said pretended balance of £500, so as aforesaid claimed to be due to him upon his said bill of costs ; and in particular the said confederate by his attorneys Messrs. — pretends that your orator J. A. did within the six weeks previously to the 19th day of February —, make a special promise to pay the same ; and the said confederate further pretends that the said sum of £36 was so as aforesaid paid by your orator J. A. as part and on account of his said bill of costs ; and that the subscriptions raised to defray the expenses of the said petition were much more than sufficient to pay the whole amount thereof, and that he the said confederate is well entitled to recover the amount of the said balance claimed by him of and against your orators. Whereas your orators charge the contrary of all the aforesaid several pretences to be the truth. And your orators further charge that such conversation as hereinbefore in that behalf stated did take place between your orator J. A. and the said O. O. in the said month of May —, and that the said confederate did then and there and afterwards at various interviews as well with your orator J. A. as with your orators T. B. and H. A. state that he did not wish or expect to be paid for the assistance he should afford, in the event of the aforesaid subscriptions being inadequate, and that consequently he should not make any charges otherwise than for the moneys which he actually expended, or used words to that or the like purport meaning and effect. And your orators further charge that it was upon this express understanding between your orators and the said O. O., that the said O. O. acted in the carrying on and prosecuting the said petition. And your orators further charge that they did not nor did any or either of them ever previously to the said month of May —, employ the said O. O. as their agent in matters of business, and that your orators never intended or would in any wise have accepted the assistance of the said O. O. in prosecuting the said petition, had not the said O. O. gratuitously volunteered his services for that purpose, more particularly as they had at that time employed regular parliamentary agents who acted as such for your orators as aforesaid. And your orators further charge that

That the defendant has brought an action for the balance of his account ; and has lately delivered his bill of costs ; Pretending that no conversation as before stated took place. That he never

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promised not to charge for his assistance in the event of the subscriptions being inadequate ;

That the plaintiffs employed him frequently as their agent ;

That they promised to pay the balance of his account ;

That plaintiff J. A. previously to a certain day specially promised to pay the same ;

That the 36<sup>l</sup>. was paid to him on account ;

That the subscriptions were sufficient to pay the expenses of the petition ;

And that he is entitled to recover.

Charge the contrary of the aforesaid pretences ;

That such conversation did take place as before stated ;

That the defendant did at

various interviews state that he did not expect to be paid for his assistance in the event of the subscriptions being inadequate, except the moneys paid by him out of pocket;

That it was upon such understanding that he acted;

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That he was never employed by the plaintiffs previously thereto;

That they would not have accepted his assistance if he had not gratuitously volunteered his services;

That they never either verbally or by letter promised to pay for his assistance, or to pay the balance of his account;

And that plaintiff J. A. never promised to pay the same.

Charge as to a letter written by the defendant to him;

That it is apparent therefrom that the defendant did not intend to charge for his assistance;

That shortly afterwards the draft for £36 was accepted;

That no intimation of any

they did not nor did any or either of them either verbally or by letter or otherwise ever promise or agree to pay the said O. O. for his professional assistance in prosecuting the said petition or relative thereto, or to pay to him the said pretended balance of £500 so as aforesaid claimed to be due to him upon his said bill of costs or any part thereof. And in particular your orator J. A. charges that he did not within the six weeks previously to the 19th day of February —, or at any time previously or subsequently thereto, make any promise to pay the same. And your orators further charge that the said confederate did on or about the — day of — write and send to your orator J. A. a letter in the words and figures or to the purport or effect following (that is to say;) [*stating the same verbatim.*] And your orators \*further charge that it is apparent from the said letter that at the time of writing the same the said O. O. did not mean or intend to set up any demand against your orators for his professional assistance relative to the said petition. And your orators further charge that the words “at least this sum of £32 in cash” were meant and intended by the said O. O. to refer to the words “and upwards” in the foregoing part of the letter mentioned, and to some small items not enumerated therein, and the same were so understood by your orators; and as a confirmation thereof, the said O. O. in a few days afterwards applied to your orator J. A. to accept the draft for £36 hereinbefore mentioned, which your orator accordingly accepted and duly honored. And your orators further charge that the said O. O. did not then or at any time afterwards until shortly before commencing the said action, intimate that any further sum of money was due to him, and that the said sum of £36 was in fact fully equal to if not more than the said O. O. had actually expended out of pocket, or was under the circumstances aforesaid justly entitled to, which the said confederate well knows to be the truth. And your orators further charge that from the whole tenor of the conversation that passed between your orator J. A. and the said O. O. at such last-mentioned interview, your orator J. A. was led to believe and did actually believe that the said sum of £36 was the only demand which the said O. O. had upon your orators or any or either of them relative to the matters aforesaid, or any of them, or upon any other account. And your orators further charge that the said sum of £36 was so as aforesaid paid by your orator J. A. and was understood and intended by and between him and the said O. O. to have been paid in full satisfaction and discharge of all claims on the part of the said O. O. in respect of or in any ways relating to the preparing and prosecuting the said petition. And your orators further charge that the aforesaid subscriptions proved very inadequate to defray the expenses of preparing and prosecuting the said petition, and that your orators are now on account thereof to the amount of £300 and upwards out of pocket which they have no means of getting repaid to them, and that the said confederate ought not under the circumstances herein stated, to proceed against your orators for the recovery of the said balance or sum of £500 alleged to be due to him in respect of his pretended bill of costs. But nevertheless under such or the like pretences as aforesaid, the said O. O. threatens and intends



to proceed in the said action commenced by him against your orators, and to recover judgment and to take out execution against your orators for the recovery of the said balance, together with costs of suit. And your orators are advised that they cannot under the circumstances safely proceed in defending the said action without having such discovery as aforesaid, which your orators charge that the said defendant ought to make, and in the meantime to be restrained from proceeding in the said action by the order and injunction of this honorable court, IN CONSIDERATION whereof and for as much as your orators are remediless in the premises at the common law, and cannot have a complete discovery of the matters aforesaid, without the aid of a court of equity. To THE END therefore that, &c. \**[Proceed as in form VI. p. 5, and interrogate to the stating and charging parts.]*

And that the said O. O. may make a full disclosure and discovery of the several matters aforesaid; and may in the meantime be restrained by the injunction of this honorable court from proceeding in the said action already commenced by him against your orators, and from commencing any other proceedings at law against your orators, or any or either of them touching the matters aforesaid. May it please, &c. *[see form No. 1, p. 6, and note (o), ibid., and form No. 4, p. 6.]*

*Pray subpoena to answer, and  
injunction against O. O.*

defendant ought not to proceed in his action. That the plaintiffs are they cannot defend the action without a discovery from the defendant.

further demand was given until lately; That the £36 was the full amount of the moneys expended by the defendant, and that the plaintiff J. A. was led to believe and fully understood

[ \*381 ] that the same was the only demand which the defendant had upon the plaintiffs; That the subscriptions proved very inadequate; That the plaintiffs are £300 out of pocket; And that the advised that Prayer.

\*CXXXVIII. *Bill for discovery in aid of a defence to an action brought by the defendant in equity for the recovery of the value of a shipment of dollars alleged to have been made by him on board the ship of which the plaintiff was commander, the signature of the plaintiff's name to the bill of lading having been forged.—The bill also prays for an injunction to restrain all proceedings in the action, and all other proceedings at law, and for a commission to examine witnesses abroad.*(18)

In the Exchequer.

To, &c.

Humbly complaining sheweth unto your honors your orator T. S. \*of, &c. debtor, &c. *[see form No. 2, p. 2.]* That in and before the month of October — your orator was commandant of his Majesty's ship or frigate called the H. which was then stationed or cruising at or off

Plaintiff, commander of a frigate, took on board a

(18) A commission to examine witnesses abroad may be obtained before answer, if the time for answering has expired; *Noble v. Garland*, Coop. Rep. 222: and see *Cheminant v. De La Cour*, 1 Madd. Rep. 208. If the common injunction has been obtained for want of an answer, it will on motion be extended to stay trial; *Bowden v. Hodge*, 2 Swanst. 258.

large quantity of dollars on merchants account.

Several sets of bills of lading executed.

One of which was kept by plaintiff, and the others delivered to the merchants.

Entries made in the ship's manifest of the

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quantity of dollars on board, on whose account shipped and to whom consigned.

The ship's manifest contained true statements of the bills of lading and of the quantities of dollars taken on board.

On the return voyage there was a large cargo of dollars and specie on board.

That the ship arrived at P., Was searched by the proper officer, and the cargo found to correspond with the ship's manifest.

That part of the cargo was by the plaintiff's permission taken out and the remainder delivered at the Bank of England for the use of the consignees.

C. L., &c. and that your orator being then commandant of the said ship took on board thereof at C. L. and other ports divers very large quantities of dollars and other specie for the purpose of bringing the same to E. on freight; and that on all occasions when your orator so took on board the said ship such quantities of dollars and other specie, your orator duly executed sets of bills of lading thereof, which sometimes consisted of three, sometimes of four, and sometimes of five bills of lading; and that your orator kept one of such bills of lading in his own possession, and delivered the others of them to the merchants who were the shippers of the said dollars and specie and to whom the same belonged; and that your orator on all such occasion duly made true entries in the ship's manifest of all such quantities of dollars and other specie so taken on board the said ship, together with the names of the several persons who shipped the same or on whose account they were \*shipped, and of the said persons to whom the same were consigned. And your orator further sheweth unto your honors that under the circumstances and by the means aforesaid, the ship's manifest in which the said entries were made contained an exact and true statement of the contents of the said bills of lading and an exact and true account of all and every the quantities of dollars and other specie which were as aforesaid taken on board the said ship whilst she was stationed or cruising at or off the several ports and places aforesaid; and that on or about the — day of December — your orator having a very large and valuable cargo of dollars and specie on board the said ship or vessel called the H., departed on board the said ship from the said port of C. on his return voyage to E., and that at the time when your orator so departed from C. aforesaid, the said ship's manifest contained an account and true statement of all the bills of lading which had been signed by your orator as aforesaid, and an exact and true account of all the dollars and specie which your orator had taken on board the said ship as aforesaid; and that on or about the 17th day of March — your orator having the said cargo on board the said ship, arrived at the port of P.; and that upon your orator's arrival at the port of P. aforesaid, the ship was immediately visited by the proper officer of his Majesty's customs appointed for that purpose, and that the said officer searched and examined the said ship and the cargo on board thereof, and he compared such cargo with the account thereof contained in the said ship's manifest, and the same were found exactly to correspond, and the said cargo so on board the said ship at P. was in fact precisely the same cargo which had been and was taken on board the said ship by your orator as hereinbefore in mentioned. And your orator further sheweth unto your honors that after the said ship and the cargo thereof had been so searched and examined as aforesaid, 4040 dollars part of the said cargo were by the orders or permission of your orator taken out of the said ship at P. and your orator caused all the remaining dollars and other specie of which the said cargo consisted, to be delivered at the Bank of England for the use of the several persons who should show themselves to be entitled thereto by producing bills of lading for the several parts thereof which had been as aforesaid signed by your

orator and delivered to the several and respective shippers thereof; and that at the same time your orator caused to be delivered to the said Bank of England the original ship's manifest, for the guidance of the Bank of England in the delivery of the said dollars and other specie to the several and respective person who should apply for the same on production of bills of lading; and that immediately after the dollars and other specie and the said ship's manifest had been so delivered to the Bank of England as aforesaid, and in or about the month of March — divers persons on the behalf of different Spanish merchants in &c., produced to the Bank of England bills of lading duly signed by your orator of the several quantities of dollars and other specie so delivered by your orator at the Bank of England, and thereupon applied to have the said dollars and specie delivered to them accordingly and that the contents of such several bills of lading were by the proper officers of the Bank of England compared with the \*several and respective entries thereof in the said ship's manifest, and the same being found exactly to correspond, the Bank of England caused the whole of the said dollars and other specie so claimed to be delivered to the several persons who applied for the same; and that in such manner and by such means as aforesaid, the whole of the said cargo of dollars and other specie was claimed and duly delivered to the several persons who were duly entitled thereto, and the said cargo of dollars and other specie and all the accounts relating thereto were finally cleared and settled. And your orator further sheweth unto your honors that it has lately been discovered and the fact is that in or about the beginning of the year — one D. J. A. who was a partner in the house of A. & A. merchants at L. aforesaid, raised divers sums of money by fraudulently endorsing and delivering to certain persons at L. and other places divers paper-writings purporting to be bills of lading of certain quantities of dollars or specie pretended to have been shipped on board different British ships and sent to E., and having subscribed to them the names of the commanders of the ships on board of which it was pretended that such dollars and specie then were; and it hath lately been discovered and the fact is that the names of the said commanders so subscribed to such paper-writings were forged by some person or persons for fraudulent purposes; and that upon such fraud being discovered the said D. J. A. absconded and went from L. to B. and afterwards to C., and took with him a very large amount of specie. And your orator further sheweth unto your honors that a few days previously to the 30th day of August —, being about seventeen months after the whole of the said cargo had been cleared as aforesaid, one J. R. A. acting on the behalf of J. B. S. of C. aforesaid merchant, the defendant hereto, applied to the Bank of England for the delivery to him of 40,000 milled hard dollars which he alleged had been part of the cargo of the said ship the H. and in order to support such application he produced to the Bank of England a certain paper-writing purporting to be a bill of lading signed by your orator of 40,000 milled hard dollars shipped on board the said ship at C. aforesaid on the 20th day of November — to be delivered to J. J. G. or in his absence to the said J. R. A.; and that in answer to such application the said J. R. A.

The ship's manifest delivered to the Bank for their guidance.

That divers persons applied and produced bills of lading signed by plaintiff.

And the same being found to

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correspond with the ship's manifest, the Bank delivered the whole quantity of dollars and specie to the persons who applied;

And all the accounts were finally settled.

That it has been lately discovered that one D. J. A. fraudulently indorsed and delivered to certain persons instruments purporting to be bills of lading of dollars shipped on board British ships.

That the commanders' names were forged;

And on being discovered D. J. A. absconded.

Application made by one J. R. A. on behalf of J. B. S. the defendant, to the Bank for the

delivery of 40,000 dollars alleged to have formed part of the cargo of plaintiff's ship;

And to support such application he produced a paper purporting to be a bill of lading signed by the plaintiff.

That he was informed that the whole cargo had been cleared.

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That he then required plaintiff to pay the same, which plaintiff refused, as he had never received the same on board;

but requested to have the particulars of the shipment.

That J. R. A. produced a paper purporting to be a bill of lading to which plaintiff's name appeared to be signed in a handwriting nearly resembling his, although no such was ever signed by him, but J. R. A. refused to inform plaintiff of the particulars of the shipment.

That on plaintiff's refusal to pay, J. B. S. commenced an action against plaintiff, in

was informed by the Bank of England to the effect hereinbefore mentioned, and that the whole cargo of the said ship had long previously been cleared; and that soon afterwards the said J. R. A. on the behalf of the said J. B. S. required your orator to pay the said sum of 40,000 milled hard dollars; and that your orator well knowing as the fact is that your orator had not taken on board the said ship the H. the said 40,000 dollars which were as aforesaid claimed by the said J. R. A. on the behalf of the said J. B. S., and had never signed any bill of lading thereof, informed the said J. R. A. to that effect, and refused to deliver or pay the said 40,000 dollars or the value thereof to the said J. B. S. or any other person on his behalf, but your orator requested the said J. R. A. as the agent of the said J. B. S. to produce to your orator the said alleged bill of lading, and to acquaint your orator with the particulars of the alleged shipment of the said 40,000 dollars on board the said ship the H. at C. on the 20th day of \*November —; and that soon afterwards and in consequence of such request the said J. R. A. did produce to your orator a certain paper-writing purporting to be such bill of lading, and that at the foot of such paper-writing your orator's name appeared to be signed in a hand nearly resembling that of your orator, although your orator did not in fact ever sign the same; but that the said J. R. A. refused to inform your orator of the particulars of the said shipment; and notwithstanding the circumstances aforesaid, the said J. B. S. by the said J. R. A. as his agent pressed your orator for payment of the value of the said 40,000 dollars; and that your orator having refused to pay the same, the said J. B. S. in or as of Michaelmas Term instant, commenced an action at law against your orator in his Majesty's Court of King's Bench for the recovery of the value of the said 40,000 dollars, which value in the declaration filed by him in the said action he hath alleged to amount to the sum of £10,000, at which sum he hath laid his damages. And your orator further sheweth that your orator having never taken the said 40,000 dollars or any part thereof on board the said ship, hath frequently and in a friendly manner by himself and his agents applied to the said J. B. S. and his agents, and requested them to set forth all the particulars in any manner relating to the said 40,000 dollars and the said alleged shipment thereof, and particularly to set forth when and where and from whom the said J. B. S. alleged that he obtained the said 40,000 dollars, and where and in whose custody the said 40,000 dollars and each and every part thereof were and was deposited previously to the said alleged shipment thereof, and how long the same remained in such custody, and when and from what particular wharf or place and by whom or by whose aid or assistance the said alleged shipment was made, and when and by whom and in whose presence the said dollars were taken on board the said ship, and when and where and in whose presence and on what occasion the said paper-writing purporting to be a bill of lading signed by your orator was signed, and whether any duplicates or copies of such paper-writing were ever and when signed, and if so where and in whose custody the same have been and are, and by what ship and by whom the said paper-writing produced to your orator as aforesaid was brought .

to England. And your orator well hoped that such his just and reasonable requests would have been complied with, as in justice and equity ought to have been the case. BUT NOW SO IT IS may it please your honors, That, &c. [see form IV. p. 5,] the said J. B. S. refuses to comply with the said requests, sometimes pretending that he did actually ship the said 40,000 dollars on board the said ship H. and that your orator received and brought the same to E. Whereas your orator expressly charges the contrary of such pretence to be true, and that so the truth would appear if the said defendant would set forth the matters and particulars aforesaid, and the discovery which is hereinafter prayed for, but which he refuses to do. And your orator charges that your orator never received on board the said ship any quantities of dollars without signing and delivering two, three, or four several bills of lading thereof to the shippers thereof, and that he always signed and retained one of such bills of lading himself, and that in case \*the said defendant had shipped the said 40,000 dollars on board the said ship, but which your orator charges was not the case, your orator would according to his constant and invariable custom in that behalf have signed and delivered to the said defendant two, three, or four several bills of lading thereof; and the said defendant having alleged that your orator had taken the said 40,000 dollars on board the said ship, and having produced only one paper-writing purporting to be a bill of lading thereof, your orator hath requested him to produce the other bills of lading thereof, but which he hath refused to do. And your orator further charges that all and every the bills of lading of the several quantities of dollars forming the said cargo, and which bills of lading were really signed by your orator, arrived in E. and were produced to the Bank of England in or about the month of March —; and that if the said paper-writing purporting to be a bill of lading of the said 40,000 dollars had come from L. to E., the same would have arrived in E. at or about the same time, but that the same was not produced until the month of August —. And your orator further charges that if the said defendant shall be permitted to proceed to trial of the said action, he intends to produce the said paper-writing purporting to be a bill of lading of the said 40,000 dollars, as evidence that your orator received and took the said 40,000 dollars on board the said ship; and inasmuch as the writing in which your orator's name appearing to be subscribed to the said paper-writing very nearly resembles and might easily be mistaken for the hand-writing of your orator, and your orator is not now able to prove the same to be a forgery, your orator is apprehensive that unless your orator shall actually prove that he never took the said 40,000 dollars on board the said ship, the said defendant may under the circumstances aforesaid obtain a verdict in the said action. And your orator charges that unless the said defendant shall set forth and discover the several matters and particulars of which the discovery is hereby prayed, your orator will be unable to prove that he did not take the said 40,000 dollars on board the said vessel. And your orator charges that some of your orator's witnesses whose evidence it will be necessary for him to adduce in relation to the matters aforesaid, are now resident in parts beyond the seas, and that until their evidence shall

which he claimed the sum of 10,000*l.* as the value of the dollars.

Applications made to the defendant to furnish particulars relating to the dollars and the shipment thereof.

Refusal to comply, pretending that he shipped the dollars on board and that plaintiff received and brought the same to England.

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Charge the contrary.

That plaintiff never received on board any dollars without signing and delivering several sets of bills of lading to the shippers thereof.

That he always retained one, and in case the defendant had shipped the 40,000 dollars on board, he would have received several bills of lading thereof; But having produced only one, plaintiff applied to him to produce the others, which he refused to do.

That all the bills of lading were produced to the Bank in March —.

That the alleged bill of lading of the 40,000 dollars was not produced until August —.

That the defendant intends to produce the same on the trial.

And charge as to the circumstances entitling the plaintiff to a discovery.

Charge that some of plaintiff's witnesses are resident abroad.

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And that the defendant ought to be restrained from all further proceedings at law.

Interrogatories to the statements.

be obtained it will be unsafe for your orator to proceed to a trial of the said action. And under all the circumstances aforesaid your orator charges that the said defendant ought to be restrained from any further proceeding in the said action at law already commenced by him, and from commencing and prosecuting any further proceedings at law in relation to the matters aforesaid, but that he is now prosecuting, and he threatens and intends to proceed in the said action, and he refuses to discover the matters aforesaid or any of them. All which actings doings pretences and refusals, &c. [see form VI. p. 5.] And more especially that they may in manner aforesaid answer and set forth whether in and before the month of October — or when else in particular your orator was not commandant of his Majesty's said ship or frigate called the H. or how otherwise; And whether in and before the said month of October — or when else in particular the said ship or frigate was not stationed or cruising at or off C. L. \*and other and what Spanish ports on the western coast of S. A. or how otherwise; And whether your orator being then commandant of the said ship or how otherwise did not and when take on board thereof at C. L. and other and what ports divers very large or some and what quantities of dollars and other and what specie, for the purpose of bringing the same or some and what part thereof to E. on freight, or for some and what other purpose in particular or how otherwise; And whether on all occasions when your orator so took on board the said ship such quantities of dollars and other specie or on some and which of such occasions your orator did not duly execute sets of bills of lading thereof or how otherwise; And whether the same did not sometimes consist of three, sometimes of four, and sometimes of five, or some and how many bills of lading or how otherwise; And whether your orator did not always or sometimes and when keep one of such bills of lading in his own possession or how otherwise; And whether he did not deliver the others or some and which of them to the merchants who were the shippers of the said dollars and specie, and to whom the same belonged or how otherwise; And whether your orator did not on all or some and which of such occasions duly make true entries in the ship's manifest of all or some and which of such quantities of dollars and other specie so taken on board the said ship, together with the names of the several persons who shipped the same, and of the persons to whom the same were consigned or some and which of them in particular or how otherwise; And whether under the circumstances and by the means aforesaid or under some and what other circumstances or by some and what other means the said ship's manifest in which the said entries were made did not contain an exact and true statement of the contents of the said bills of lading or of some and which of them, and an exact and true account of all and every or some and which of the quantities of dollars and other specie which were as aforesaid taken on board the said ship whilst she was stationed or cruising at or off the several ports or places aforesaid or how otherwise, and if not why not; And whether on or about the 12th day of December — your orator had not a very large and valuable cargo of dollars and specie on board the said ship or frigate called the H. or how

otherwise ; And whether on or about the 12th day of December — or when else in particular your orator did not depart on board the said ship from the said port of C. on his return voyage to England or how otherwise ; And whether at the time when your orator so departed from C. aforesaid or when else in particular the said ship's manifest did not contain an exact and true statement of all and every or some and which of the bills of lading which had been signed by your orator as aforesaid, and an exact and true account of all or some and which of the dollars and other specie which your orator had taken on board as aforesaid or how otherwise, and if not why not ; And whether on or about the said 17th day of March — or when else in particular your orator did not arrive at the port of P. or how otherwise ; and whether your orator had not then the whole or some and what part of the said cargo on board or how otherwise ; and whether upon your orators arrival at P. \*aforesaid the said ship was not immediately or when else visited by the proper officer of his Majesty's customs appointed for that purpose or how otherwise ; And whether the said officer did not and when search and examine the said ship and the cargo on board thereof or how otherwise ; And whether he did not compare such cargo with the account thereof contained in the said ship's manifest or how otherwise ; And whether the same were not found exactly to correspond or how otherwise, and if not why not ; And whether the said cargo on board the said ship at P. was not in fact precisely the same cargo which had been taken on board the said ship by your orator as hereinbefore mentioned or how otherwise, and if not why not ; And whether soon after the said ship and the cargo thereof had been so searched and examined as aforesaid and when in particular 6340 or some and what other number of dollars part of the said cargo were not by the orders or permission of your orator or how otherwise taken out of the said ship at P. or how otherwise ; And whether your orator did not and when cause all the remaining dollars and other specie of which the cargo consisted or some and what part thereof to be delivered at the Bank of England or where else for the use of the several persons who should show themselves to be entitled thereto by producing bills of lading of the several parts thereof which had been as aforesaid signed by your orator and delivered to the several shippers thereof, or how otherwise ; And whether at the same time or when else in particular your orator did not cause to be delivered to the said Bank of England the original ship's manifest for the guidance of the Bank of England in the delivery of the said dollars and other specie to the several and respective persons who should apply for the same on production of bills of lading or how otherwise ; And whether immediately or when after the said dollars and other specie and the said ship's manifest had been so delivered to the Bank of England as aforesaid, and whether or not in or about the month of March — or when else in particular divers or some and what persons or person on behalf of different Spanish merchants in S. A. and who in particular by name did not produce to the Bank of England bills of lading duly signed by your orator of the several quantities of dollars and other and

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what specie so delivered by your orator at the Bank of England or how otherwise ; And whether such several persons or some and which of them did not thereupon apply to have the said dollars and other specie or some and what part thereof, delivered to them accordingly or how otherwise ; And whether the contents of such several bills of lading or some and which of them were not by the proper or some and what officers or officer of the Bank of England compared with the several and respective entries thereof in the said ship's manifest or how otherwise ; And whether the same or some and which of them were not found exactly to correspond or how otherwise, and if not why not ; And whether the said Bank of England did not and when cause the whole or some and what part of the said dollars and other specie so claimed to be delivered to the several persons who applied for the same or to some and which of them in particular or how otherwise, and if not why not ; \*And whether in such manner and by such means as aforesaid or in some and what other manner or by some and what other means the whole or some and what part of the said cargo of dollars and other specie was not claimed and duly delivered to the several persons who were duly entitled thereto or how otherwise ; And whether all or some and which of the accounts relating thereto were not and when finally cleared and settled or how otherwise ; And whether the said D. J. A. was not a partner in the house of A. and A. merchants at L. ; And whether it has not lately been discovered, and whether the fact is not that in the beginning of the year — or at some and what other time the said D. J. A. raised divers or some and what sums or sum of money from divers or some and what persons or person at L. or elsewhere and where by indorsing and delivering to such persons or person divers or some and what paper-writings or writing purporting to be bills or a bill of lading of certain or some and what quantities or quantity of dollars or specie pretended to be shipped on board different or some and what British ships or ship and sent to England or how otherwise ; And whether such paper-writings or writing had not subscribed to them or any and which of them the names or name of the commanders or commander of the ships or ship on board whereof such dollars or specie were pretended to have been shipped or how otherwise ; And whether such names or name were or was not forged for fraudulent purposes or how otherwise ; And whether upon such fraud being discovered or upon any other and what occasion the said D. J. A. did not abscond or go from L., and whether he did not go to B. ; And whether he did not afterwards go to M. ; And whether he did not take specie to a very large amount with him or how otherwise ; And whether a few days previously to the 30th day of August — or when else in particular, and whether or not about seventeen months or some and what other length of time after the whole of the said cargo had been cleared as aforesaid, the said J. R. A. acting on the behalf of the said defendant or how otherwise did not apply to the Bank of England for the delivery to him of 40,000 milled hard dollars, or some and what other number of dollars or how otherwise ; And whether he did not allege that such 40,000 milled hard dollars had been part of the cargo of the said ship H. or how otherwise ;



And whether in order to support such application or for some and what other purpose he did not and when produce to the Bank of England a certain paper-writing purporting to be a bill of lading signed by your orator of 40,000 milled hard dollars shipped on board the said ship at C. aforesaid on the 20th day of November —, to be delivered to the said J. J. G. or in his absence to the said J. R. A. or how otherwise; And whether in answer to such application the said J. R. A. was not informed by the Bank of England to the effect hereinbefore mentioned, or to some and what other effect, and that the whole cargo of the said ship H. had long previously been cleared or how otherwise; And whether soon afterwards and when in particular the said J. R. A. on behalf of the said defendant or how otherwise did not require your orator to pay the said sum of 40,000 milled hard dollars or some and what part thereof or how otherwise; And whether your orator did not well know and whether the \*fact is not that your orator had not taken on board the said ship H. the said 40,000 milled hard dollars which were as aforesaid claimed by the said J. R. A. on the behalf of the said defendant, and had never signed any bill of lading thereof or how otherwise; And whether therefore or for some and what other reason your orator did not inform the said J. R. A. to that effect, or to some and what other effect; And whether he did not refuse to deliver or pay the said 40,000 milled hard dollars or the value thereof to the said defendant or to any other person on his behalf or how otherwise; And whether your orator did not request the said J. R. A. as the agent of the said defendant to produce to your orator the said alleged bill of lading, and to acquaint your orator with the particulars of the said alleged shipment of the said 40,000 milled hard dollars on board the said ship H. at C. aforesaid on the 20th day of November — or how otherwise; And whether soon afterwards and when in particular, and whether or not in consequence of such requests or how otherwise, the said J. R. A. did not produce to your orator a certain paper-writing purporting to be a bill of lading or how otherwise; And whether at the foot of such paper-writing your orator's name did not appear to be signed in a hand very nearly resembling that of your orator or how otherwise; and whether the said J. R. A. did not refuse to inform your orator of the particulars of the said alleged shipment and why; And whether notwithstanding the circumstances aforesaid the said defendant did not by the said J. R. A. or how otherwise press your orator for payment of the value of the said 40,000 milled hard dollars or how otherwise; And whether your orator having refused to pay the same, the said defendant did not in or as of Michaelmas Term instant or when else in particular commence an action at law against your orator in his Majesty's Court of King's Bench for the recovery of the value of the said sum of 40,000 milled hard dollars or for some and what other purpose or how otherwise; And whether he hath not in the declaration filed by him in the said action alleged the value of the said 40,000 milled hard dollars to amount to the sum of 10,000*l.* or to some and what other amount; And whether he hath not laid his damages at such last-mentioned sum at some and what other sum of money in par-

[ \*389 ]

[ \*390 ]

Interrogato-  
ries to the  
charging  
parts.

ticular or how otherwise ; And whether your orator hath not made or caused to be made such applications and requests as aforesaid or some and what other application and requests to the said defendant and his agents or to some or one and which of them in particular ; And whether they or some or one and which of them have not or hath not refused to comply therewith and why ; And if the said defendant or his agents shall allege or pretend that the said defendant shipped the said 40,000 milled hard dollars or any other number of dollars on board the said ship the H., then that the said defendant may set forth all the particulars in any manner relating thereto and the alleged shipment thereof ; And particularly that he may set forth when and where and from whom the said defendant alleges that he obtained the said 40,000 milled hard dollars, and where and in whose custody the said 40,000 milled hard dollars and each and every part thereof were and was deposited previously to the said \*alleged shipment thereof, and how long the same remained in such custody and when and from what particular wharf or place or by whose aid or assistance the said alleged shipment was made, and when and by whom and in whose presence the said dollars were received on board the said ship, and when and where and in whose presence and on what occasion the said paper-writing purporting to be a bill of lading signed by your orator was signed, and whether any duplicates or copies or duplicate or copy of such paper-writing were or was ever and when signed, and if so where and in whose custody the same have or hath been and are or is and by what ship and by whom the said paper-writing produced to your orator as aforesaid was brought to England, and why it was detained so many months after the sailing of the said ship H. And that the said defendant may answer and set forth whether your orator ever and when and from whom received on board the said ship any and what quantity of dollars without signing and delivering two three or four several or some and how many bills of lading thereof to the shippers thereof or how otherwise ; And whether he did not always or sometimes and when sign and retain one of such bills of lading himself or how otherwise ; And whether in case the said defendant had shipped the said 40,000 milled hard dollars on board the said ship your orator would not according to his constant and invariable custom in that behalf have signed and delivered to the said defendant two three or four several or some and how many bills of lading thereof or how otherwise, and if not why not ; And whether the said defendant hath ever and when produced more than one bill of lading of the said 40,000 milled hard dollars or how otherwise, and if not why not ; And whether your orator hath not requested him to produce the other bills of lading thereof or how otherwise ; And whether he hath not refused so to do and why ; And whether all and every or some and which of the bills of lading of the several quantities of dollars forming the said cargo which were really signed by your orator did not arrive in England, and whether the same or some or one or which of them were not or was not produced to the Bank of England in or before the month of March — or at some and what other time or how otherwise ; And whether if the said paper-writing purporting to be a bill of lading of the said 40,000 milled hard

dollars had come from C. to E. the same would not have arrived in E. at or about the same time or how otherwise, and if not why not; And whether the same was produced previously to the month of August — or when in particular was the same produced; And whether if the said defendant shall be admitted to proceed to trial of the said action he does not intend to produce the said paper-writing purporting to be a bill of lading of the said 40,000 milled hard dollars as evidence that your orator received and took the said 40,000 milled hard dollars on board the said ship or how otherwise; And whether the hand-writing in which your orator's name appears to be subscribed to the said paper-writing does not very nearly resemble and whether the same might not easily be mistaken for the hand-writing of your orator or how otherwise; And whether therefore or for some and what other reason your orator is not apprehensive that unless your orator shall actually prove that he never took the said \*40,000 milled hard dollars on board the said ship, that the said defendant may under the circumstances aforesaid obtain a verdict in the said action or how otherwise; and whether your orator will not be unable to prove that he did not take the said dollars on board the said vessel unless the said defendant shall set forth and discover the several matters and particulars aforesaid or how otherwise; And whether some and which of your orator's witnesses whose evidence it will be necessary for him to adduce in relation to the matters aforesaid are not now resident in parts beyond the seas, and where in particular do they respectively reside; And whether until their or some and which of their evidence shall be obtained it will not be unsafe for your orator to proceed to a trial of the said action or how otherwise; And whether under all the circumstances aforesaid the said defendant ought not to be restrained from any further proceeding in the said action at law already commenced by him, and from commencing and prosecuting any other proceedings at law in relation to the matters aforesaid or how otherwise, and if not why not; And whether he is not now proceeding; And whether he does not threaten and intend to proceed in the said action or how otherwise; And whether he does not refuse to discover the matters aforesaid or any or either and which of them and why.

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And that the said defendant may make a full and true discovery Prayer. of all and every the matters hereinbefore stated and inquired after; And that he may be restrained by the order or injunction of this honorable court from any further proceedings in the said action at law already commenced by him and from commencing or prosecuting any other action or proceeding at law in relation to the matters aforesaid or any of them. And that your orator may be at liberty to sue out one or more commission or commissions to examine your orator's witnesses abroad touching or concerning the matters aforesaid or any of them. May it please your honors, &c. [see form No. 1, p. 6, and note (o), *ibid.*; and form No. 4, p. 6.]

*Pray subpoena and injunction against  
J. B. S., omitting the words "to  
stand to and abide by such order  
and decree," &c.*

*\*CXXXIX. Bill for discovery and production of indentures of lease and release and settlement, in aid of an ejectment brought for the recovery of a moiety of the settled estates.*(19)

That prior to the settlement M. M. was seised in fee as heiress at law of her father.

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That in contemplation of the marriage of her daughter M. E. M. with T. B. certain indentures of lease and release and settlement were executed.

The estates limited in moieties.

The bill (which was filed by the Rev. W. Wright and S. E. B. Brewer his wife) states that prior to and at the time of the execution of the indentures of lease and release and settlement after mentioned, M. M. widow (one of the parties to the said settlement) was seised or \*entitled in fee as heiress at law of her father T. B. deceased, to the manor of P. alias P. in the county of S. and divers lands messuages, &c., in the parish of M. N. in the same county, and in certain other parishes and places near thereto.

That a marriage being intended between M. E. M. the younger daughter of the said M. M. with T. B., certain indentures of lease and release and settlement dated 8th and 9th August, 1748, were executed between the said M. M. and M. E. M. of the first part, T. B. of the second part, and Sir J. C. bart, and J. B. of the third part, and Sir W. M. bart, and the Rev. C. P. clerk of the fourth part, whereby after reciting the intended marriage between the said T. B. and M. E. M., it was witnessed that in consideration of a settlement made or intended to be made by the said T. B. of certain real estates belonging to him, the said M. M. did grant and confirm unto the said Sir W. M. and C. P. their heirs and assigns all the said manor of P. alias P. and divers messuages farms lands, &c. therein described and situate in the parish of M. N. in the said county of S. and in other parishes or places near thereto with their appurtenances, To hold unto the said Sir W. M. and C. P. their heirs and assigns, To the use of the said M. M. and her heirs until the said intended marriage, and from and after the solemnization thereof, As to one moiety of the said manor and premises, To the use of the said T. B. for his life, with remainder, To the use of the said Sir W. M. and C. P. and their heirs during the life of the said T. B., upon trust to preserve the contingent remainders thereafter limited with remainder, To the use of the said M. E. M. for her life; And as to the other moiety of the said manor and premises, To the use of the said Sir J. C. and C. P. their executors administrators and assigns for the term of 200 years upon certain trusts therein mentioned, which have been since satisfied, and subject thereto, To the use of the said T. B. for his life; with remainder, to the use of the said Sir W. M. and C. P. and their heirs during the life of the said T. B., upon trust to preserve the contingent remainders thereafter limited; with remainder, To the use of the said M. E. M. for her life; with remainder, As To the whole of the said manor and premises, To the use of the said Sir W. M. and C. P. their executors administrators and assigns for a term of 500 years upon certain trusts therein after mentioned for raising portions for the younger sons and daughters of the said marriage; with remainder, To the use of the first and

(19) See *Wright v. Plumtre*, 3 Madd. 481; a demurrer was put into this bill but overruled on account of the allegation inserted postea, p. 393, in italics.

other sons of said T. B. and M. E. M. severally and successively in tail male; With remainder to the use of the daughters of the said T. B. by the said E. M. as tenants in common in tail general, with cross remainders; with remainder, As to the moiety of the said manor and premises so limited to the said trustees for the said term of 200 years as aforesaid, To the use of the said T. B. his heirs and assigns for ever; And as to the other moiety of the said manor and premises, to the use of D. M. the other daughter of the said M. M. during her life; with remainder, to the use of the said Sir W. M. and C. P. and their heirs during the life of the said D. M., upon trust to preserve contingent remainders; with remainder, To the use of the first and other sons of the body of the said D. M. severally and successively in tail male; with remainder, to the use \*of the daughters of the said D. M. as tenants in common in tail, with cross remainders; with remainder, To the use of all and every the nearest of kin in equal degree to the said D. M. at the time of her decease without issue, of the name B., share and share alike as tenants in common and not as joint tenants, and their heirs and assigns for ever; And the trusts of the said term of 500 years were declared to be for the raising some sum of money for the daughters and younger sons of the said marriage; and in the said indenture of release and settlement was contained in a proviso for determining the said term of 500 years when the trust thereof should be satisfied or become unnecessary, "*but the said indentures of lease and release and settlement being in the possession or power of the defendants hereto, the plaintiffs are unable to set forth the same with certainty.*"

That soon after the date and execution of the said indentures of settlement a marriage was had between the said T. B. and M. E. M. and upon the said marriage the said T. B. entered into possession or receipt of the rents and profits of the said manor and premises as tenant for life thereof under the aforesaid settlement and continued in such possession or receipt until the time of his death in 1802; and he the said T. B. in his life-time made his will and thereby gave and devised unto the said D. M. and her heirs all his messuages lands tenements and hereditaments whatsoever.

That the said M. E. the wife of the said T. B. died several years ago in the life-time of her husband leaving no issue of the said marriage, or that if she left any such issue, the same failed in the life-time of the said T. B., and upon the decease of the said T. B., the said D. M. by virtue of the limitations contained in the said indenture of release and settlement, entered into possession or receipt of the rents and profits of one moiety of the said manor and premises as tenant for life, and she by virtue of the will of the said T. B., entered into possession or receipt of the rents and profits of the other moiety of the said manor and premises, and continued in such possession or receipt until the time of her death in February 1805.

That the said D. M. by a codicil to her will devised all her estate and interest in the said estates which were theretofore the estates of her grandfather T. B. deceased, (meaning the said manor and premises comprised in the said indentures of lease and release and set-

The ultimate limitation on failure of issue of the marriage, being as to one moiety, To T. B. in fee;

[ \*393 ]

And as to the other moiety, to the nearest of kin of the name of B. in fee in equal degree to D. M. (the other daughter of M. M.) at the time of her decease without issue.

But the deeds being in the possession of the defendants, the plaintiffs are unable to set forth the same with certainty.

The marriage was solemnized and T. B. as tenant for life entered into possession, and by his will devised all his estates to D. M.

Death of M. E. the wife of T. B. in his life time without issue;

On his death, D. M. entered into possession one moiety as tenant for life, and of the other

moiety as devisee of T. B. By her will she devised all her estates to the defendants.

Death of D. M. unmarried, and thereupon the defendants entered into possession of both moieties.

At the time of the death of D. M. plaintiff S. E. B. B. W. was her nearest of kin of the name of B.;

[ \*394 ]

And thereby plaintiffs became entitled to one moiety of the estates.

That they have brought an ejectment to recover possession thereof, but the indentures of settlement being in the possession of the defendants, plaintiffs are unable to go to trial without a discovery of the contents thereof.

Prayer.

tlement,) unto E. P., J. S. D. and P. B. D. (the defendants after named) their heirs and assigns.

That the said D. M. died unmarried, and upon her decease the said E. P. J. S. D. and P. B. D. possessed themselves of the said indentures of lease and release and settlement, and they entered into the possession or into the receipt of the rents and profits not only of the said moiety of the said manor and premises to which the said D. M. was entitled by virtue of the said will of T. B., but also of the other moiety thereof, and which by the said indenture of release and settlement was limited upon the death and failure of issue of the said D. M. to the nearest of kin to D. M. at the time of her decease without issue of the name of B.

That at the time of the death of the said D. M. *plaintiff* S. E. B. B. W. was the nearest of kin to the said D. M. of the name or \*family of B., (that is to say): the said *plaintiff* was the daughter of the Rev. J. B. clerk deceased, who was the only son of N. B. deceased, who was a brother of the aforesaid T. B. deceased, who was the natural grandfather of the said D. M. and the father of the said M. M. the settlor, so that the said *plaintiff* stood in the relationship of third cousin to the said D. M.; and by reason of said *plaintiff* being such nearest of kin to the said D. M. as aforesaid, *plaintiffs* in right of *plaintiff* S. E. B. B. W. became entitled upon the death of the said D. M. and by virtue of the limitation contained in the said indenture of release and settlement to one moiety of the said manor and premises.

That *plaintiffs* have lately commenced an action of ejectment against the said E. P. J. S. D. and P. B. D. to recover the possession of the said moiety of the said manor and premises to which *plaintiffs* are so entitled as aforesaid, but the said indenture of lease and release and settlement being in the possession or power of the said defendants, *plaintiffs* are unable safely to go to trial in the said action without a discovery of the contents thereof. To THE END therefore that the said defendants E. P. J. S. D. and P. B. D. may, &c. [as in form VI. p. 5, interrogating to the statements.]

And that the said defendants may make a full and true disclosure and discovery of all and singular the matter and things aforesaid, in order that the *plaintiffs* may give the same in evidence at the trial of the said action of ejectment; and that the said indentures of lease and release and settlement of the 8th and 9th of August 1748, may be brought into court and deposited with one of the masters thereof, and that *plaintiffs* may be at liberty to use and give in evidence the same at the trial of the said action in support thereof. [For the conclusion see form No. 1, p. 6, and note (o), *ibid.*]

CXL. *Bill in the Lord Mayor's Court, London, by the defendant in the action there, for a discovery in aid of his defence to the action, (20) he having pleaded to the jurisdiction.*

To, &c. [see form No. 3, *antea*, p. 2.]

Humbly complaining sheweth unto your lordship and worships your orator M. W. of, &c., That W. B. J. B. and S. B. all of, &c. merchants and copartners have lately commenced an action against your orator in this honorable court, and have declared in such action *in concessit solvere*, (21) and your orator hath pleaded thereto that the cause of such action (if any) accrued out of the jurisdiction of this court, to which the plaintiffs in the said action have replied that the cause of such action accrued within the jurisdiction.

\*And your orator further sheweth that he never had any dealings and transactions whatsoever with the said W. B. J. B. and S. B. within the city of L. or within the jurisdiction of this court, and he hath applied to them to state the particulars of the demand upon which the said action is commenced and the nature and origin thereof. BUT NOW SO IT IS may it please your lordship and worships that the said W. B. &c. refuse to state a full true and particular account of the particulars and amount of the demand in respect whereof the said action is commenced, together with the times or time when and the manner in which and the place where the several transactions took place from which such demand arose, and who were all the persons concerned therein. And the said defendants sometimes pretend that the said demand arose from some bills or bill of exchange which were or was drawn accepted or indorsed by your orator or on his behalf, but they refuse to set forth the dates and contents of such bills or bill, and when and where and by whom and on whom the same were or was drawn, and by whom the same were or was accepted and indorsed, and what considerations or consideration were or was paid or given to your orator for drawing accepting or indorsing the said bills or bill, and when and where and by whom and in what manner such consideration was paid or given, and when and where and in what manner the said defendants first became the holders of such bills or bill, and what consideration was paid or given by them for the same, and when and in what manner and to whom such consideration was so paid or given by the said defendants, and in what manner they make out a demand against your orator upon the said bills or bill arising within the jurisdiction of this court. And your orator charges that the said defendants have in their custody or power divers books of account letters and copies of letters and other papers and writings which relate to their said demand upon which the said action has been commenced, but they refuse to set forth an accurate

That the defendants have commenced an action against plaintiff, and that he pleaded to the jurisdiction.

[ \*395 ] That he never had any dealings with the defendants within the jurisdiction of the court, and has applied for the particulars of their demand.

Pretence that the defendants' demand arose in respect of bill transactions, but the defendants refuse to discover the particulars thereof.

Charge as to books, letters, &c.

(20) A prayer for *relief* does not render a bill for discovery in the Lord Mayor's Court demurrable; Ashley on Attachments, p. 105.

(21) See Ashley on Attachments, p. 68.

That plaintiff  
is unable to  
defend the  
action without  
a discovery.  
Interrogato-  
ries.

[ \*396 ]

list and description of all such books of account letters copies of letters papers and writings, and to produce the same to your orator and his agents; and your orator without a discovery of the several matters aforesaid will be unable to defend himself in such action. To THE END therefore that the said defendants, W. B. J. B. and S. B. may, &c. [*as in form VI. p. 5,*] and more especially Whether they the said W. B. J. B. and S. B. have not commenced an action against your orator in this court; And whether they have not declared in such action *in concessit solvere* or how otherwise; And whether your orator hath not pleaded thereto that the cause of such action (if any) accrued out of the jurisdiction of this court or to that effect; And whether the plaintiffs in the said action have not replied that the cause of such action accrued within the jurisdiction or how otherwise; And whether your orator ever had any and what dealings and transactions with them the said W. B. J. B. and S. B. or any and which of them within the city of London or within the jurisdiction of this court and where in particular, and that the said defendants may state a full true and particular account of all the particulars and amount of the demand in respect whereof the said action is commenced, together with the times or time when and the \*manner in which and the place or places where the several transactions took place from which such demand arose and who were all the persons concerned therein; And whether the said demand arose from any and what bills or bill of exchange which were or was drawn accepted or indorsed by your orator or on his behalf, and that they may set forth the dates or date and contents of all such bills or of such bill, and when and where and by whom and on whom the same were or was drawn, and by whom the same were or was accepted and indorsed, and what considerations or consideration were or was paid or given to your orator for drawing accepting or indorsing the said bills or bill, and when and where and by whom and in what manner such consideration was paid or given by them for the same and when and where and in what manner and to whom such consideration and every part thereof was so paid or given by the said defendants, and in what manner they make out a demand against your orator upon the said bills or bill arising within the jurisdiction of this court; And that the said defendants may answer and set forth in manner aforesaid whether they have not now or had not and when last in their custody or power some and what books or book of account and some and what letters and copies of letters and other papers and writings which relate to their said demand upon which the said action has been commenced, and that the said defendants may set forth an accurate list and description of all and singular such books of account letters copies of letters papers and writings, and that they may produce the same with liberty for your orator his solicitors or agents to inspect the same and take copies thereof as they shall be advised.

And that the said defendants may answer the premises; and may make a full and true discovery of the several matters aforesaid, and that your orator may have the benefit thereof in the trial of the said action. May it please your lordship and worships out of your accus-



tomed goodness to cause the said W. B. J. B. and S. B. to be warned, &c.

*Pray process against W. B.  
J. B. and S. B.*

N. B. Though this bill does not pray any injunction, still it operates and is in effect an injunction bill; because by the practice of the Mayor's Court, a bill is a stay of proceedings from the time of filing thereof.

\*CXLI. *Bill in the Lord Mayor's Court, London, for a discovery of property in the hands of the garnishees, in aid of an attachment.* [ \*397 ]

To, &c. [see form No, 3, antea, p. 2.]

Humbly complaining show unto your lordship and worships your orators G. M. and R. M. of —, merchants and partners, That J. B. late of —, mariner, but now of —, being justly and truly indebted unto your orators in the sum of £—— for goods sold and delivered and your orators being informed that A. R. and W. G. of, &c. had in their hands and custody divers sums of money and also divers goods and chattels which belonged to and were the property of the said J. B. and also several notes of hand, bills and other securities which were the property of the said J. B. the produce of goods sold by them for and on account of the said J. B. to a very considerable amount, and more than sufficient to answer your orator's demands on the said J. B.; and your orators having frequently applied to the said J. B. for payment thereof, and he refusing to pay the same, your orators were advised to enter an action of debt in this honorable court against the said J. B., and according to the form of proceedings in such cases had and pursued, to cause such moneys goods chattels and effects of the said J. B. to be attached in the hands of the said defendants; and your orators accordingly on — did cause such action of debt to be entered against the said J. B., and on — between the hours of — and — in the —, did cause an attachment to be thereupon made of the said moneys goods chattels and effects in the hands of the said defendants belonging to the said J. B. And your orators well hoped that as the said defendants well knew that the said debt was justly due to your orator from the said J. B., that they the said defendants would have suffered your orators to have proceeded to a condemnation of the said moneys goods chattels and effects of the said J. B. so attached as aforesaid, and would have acquainted or furnished your orators with the particulars of the moneys goods chattels and effects which they had in their hands custody or power belonging to the said J. B., and thereby enabled your orators to have had execution of the said attachment, as in justice and equity they ought to have done. BUT NOW SO IT IS may it please your lordship and worships that

The debt due to the plaintiffs.

An action of debt commenced against the debtor, and an attachment made of his property in the hands of the defendants the garnishees.

The defendants dispute the attachment, and refuse to acquaint plaintiff with the nature of the property in their hands.

Pretence that there is no debt due to the plaintiffs, and that the defendants had no property of the debtors in their hands.

Charge that the debt was due at the time of making the attachment,

[ \*398 ]  
and that the defendants had then property of the debtors in their hands, and have since received other property.

Pretence that the same had been previously made over to other persons.

Charge the contrary.

Pretence that another attachment had been previously issued.

Charge the contrary.

the said A. R. and W. G. sometimes pretend that the said J. B. was not indebted to your orators in manner and form aforesaid or otherwise howsoever; and at other times they will admit that he was indebted to your orators as aforesaid; but then they pretend that at the time of making the said attachment they had not any moneys goods and chattels belonging to the said J. B. in their hands custody power or possession. Whereas your orators expressly charge that at the time of making such attachment the said J. B. was indebted to your orators in such amount as hereinbefore stated, and that the said defendants or one of them had in their or his hands custody or power moneys goods chattels and also notes bills and other securities belonging to the said \*J. B. to a great amount and value, and more than sufficient to answer and pay your orators said demand; and that since the making of the said attachment divers other sums of money goods and chattels, and also notes bills and other securities have come into the hands power custody and possession of the said defendants or one of them belonging to the said J. B., and particularly that the said defendants had in their hands custody or power at the time of your orator's making the said attachment or at some time since, the sum of £—— or some large sum of money which the said defendants received at —— for and on account and to the use of the said J. B., arisen from the sale of goods belonging to and the property of the said J. B. And at other times the said defendants admit that at the time of making the said attachment they had moneys goods chattels and effects and also notes bills and other securities of the said J. B. in their hands custody power or possession, and that since the making thereof divers other sums of money goods and chattels notes bills and other securities belonging to the said J. B. have come into their hands custody power or possession; but then they give out and pretend with a view and design to overturn and set aside the said attachment so made by your orators as aforesaid, that long before your orators' making such attachment as aforesaid, the said moneys goods chattels and effects notes bills and other securities belonging to the said J. B. in their hands were wholly appropriated assigned and made over by bills orders indorsements assignments or otherwise by the said J. B. to divers persons, prior to your orator's making the said attachment; and which said bills orders indorsements and assignments the said defendants pretend are binding on them, and that consequently they are compellable to apply the said moneys goods chattels and securities accordingly. Whereas your orators charge the contrary of such pretences to be the truth. And at other times the said defendants pretend that long before the time of your orators' making such attachment as aforesaid, the said moneys goods chattels and securities belonging to the said J. B. in their hands, were attached by other persons for more than the amount of such moneys goods chattels and effects notes bills and other securities, and that such attachment being made prior to the attachment so made by your orators as aforesaid, is entitled to a preference, and ought to be paid and discharged before your orators' said attachment. Whereas your orators charge the contrary of such last-mentioned pretences to be the truth; and the said defendants will at other

times admit that at the time of your orators' making the said attachment they had in their hands and custody moneys goods chattels and effects and also notes bills and other securities belonging to the said J. B. more than sufficient to answer and pay your orators' said debt; but then they give out and pretend that the said moneys goods chattels and securities were not liable in law to be attached, but refuse to discover why or for what reasons they are not so liable; and at other times the said defendants pretend, that the said J. B. is indebted to them in a much larger sum of money than the said moneys goods chattels and securities which they had in their hands custody or power at the time of your orators making the said attachment, and which have since come into the \*hands custody or power would be sufficient to satisfy and pay. Whereas your orators charge the contrary thereof to be the truth, and that a balance was due from the said defendants respectively to the said J. B. at the time of your orators' making the said attachment. All which actings doings pretences, &c. [*As in form VI. p. 5, omitting the word "confederates," and interrogate to the stating and charging parts.*]

Pretence that the property in their hands was not liable at law to be attached; and that the debtor was indebted to the defendants in a much larger amount.

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Charge the contrary. That a balance was due from them.

And if the said defendants or either of them shall pretend or allege that the said J. B. was indebted to them or either of them in any or a much larger sum of money than the moneys goods chattels and securities in their hands custody or power will be sufficient to satisfy and pay, then that they may set forth and discover the particulars of such debt and debts sum and sums of money so due and owing from the said J. B. to the said defendants or either and which of them, and how and in what manner and upon what account the said debt or debts was or were contracted, and when, and all the particulars relative thereto; and that the said defendants may also set forth and discover how much of the moneys goods chattels and securities belonging to the said J. B. in their hands custody or power at the time of your orators' making the said attachment as aforesaid, or come into their hands since the making thereof, now remain in the hands custody or power of them the said defendants or either and which of them and undisposed of together with a full true and particular description of all such moneys goods chattels and other securities; And whether some and what balance and to what amount was not due from them respectively or from one and which of them to the said J. B. at the time of your orators' making the said attachment as aforesaid, or at some time and when since.

Interrogatories as to the debt claimed by the defendants to be due to them.

And that the said defendants may answer the premises, and may make a full and true disclosure and discovery of the several matters aforesaid. May it please your lordships and worships, &c.

Prayer.

N. K.

## \*CHAPTER IV.

## BILLS NOT ORIGINAL.

Bills not original are either an addition to, or a continuance of an original bill, or both. An imperfection in the frame of a bill may generally be remedied by an amendment; but the imperfection may remain undiscovered whilst the proceedings are in such a state that an amendment can be permitted according to the practice of the court. This is particularly the case where, after the court has decided upon the suit as framed, it appears necessary to bring some other matter before the court to obtain the full effect of the decision; or, before a decision has been obtained, but after the parties are at issue upon the points in the original bill, and witnesses have been examined, (in which case the practice of the court will not permit an amendment of the original bill,)(1) some other point appears necessary to be made, or some additional discovery is found requisite.(2) And though a suit is perfect in its institution, it may, by some event subsequent to the filing of the original bill, become defective, so that no proceeding can be had, either as to the whole or as to some part, with effect; or it may become abated, so that there can be no proceeding at all, either as to the whole, or as to part of the bill. The first is the case when, although the parties to the suit may remain before the court, some event subsequent to the institution of the suit has either made such a change in the interests of those parties, or given to some other person such an interest in the matters in litigation, that the proceedings, as they stand, cannot have their full effect. The other is the case when, by some subsequent event, there is no person before the court by whom, or against whom, the suit, in the whole or in part, can be prosecuted.(3)

[ \*401 ] \*Bills not original may be,

- I. A supplemental bill, which is merely an addition to the original bill.
- II. A bill of revivor, which is a continuance of the original bill, when by death some party to it has become incapable of prosecuting or defending a suit, or a female plaintiff has by marriage incapacitated herself from suing alone.

(1) An amendment for the purpose of adding parties will be allowed at the hearing of the cause; *Jones v. Jones*, 3 Atk. 110; *Goodwin v. Goodwin*, *ibid.* 370; *Palk v. Lord Clinton*, 12 Ves. 48, 66, 2d edition; *Hill v. Kirwan*, 1 Jac. R. 163, 4; *Wellbeloved v. Jones*, 1 Sim. & Stu. 43; or to correct a mere clerical error, *Attorney General v. Newcomb*, 14 Ves. 6. In the case of an infant complainant, this liberty it seems would be granted without restriction if for his benefit, *Prichard v. Quinchant*, Amb. 147; Ld. Red. Tr. Pl. p. 55, note (m), 4th ed.

(2) See *Goodwin v. Goodwin*, cited *supra*.

(3) See Ld. Red. Tr. Pl. 56. 4th ed.

III. A bill both of revivor and supplement, which continues a suit upon an abatement, and supplies defects arisen from some event subsequent to the institution of the suit.(4)

SECT. I.

SUPPLEMENTAL BILLS.\*

Where the imperfection of a suit arises from a defect in the original bill, or in some of the proceedings upon it, and not from

(4) Ld. Red. Tr. Pl. p. 34, 5.

\* In order to file a supplemental bill, it must be shown that the matter relied on as supplemental, has arisen since the commencement of the original suit, or that the facts have first become known to the plaintiff in such a way that he could make use of them since the cause passed the stage in which he might have leave to amend, or that he had been prevented by inadvertence, mistake, or some other cause satisfactorily shown, from availing himself of the matter proposed to be shown at an earlier stage of the cause; and the supplemental bill must be confined to such matter, and must be verified by affidavit, or other satisfactory proof. *Pedrick v. White*, 1 Met. 76; *Bowie v. Minter*, 2 Ala. 406; see also, *Husbrouck v. Shuster*, 4 Barb. Sup. Ct. 285; *Collins v. Lavenberg*, 19 Ala. 682. The court will also permit other matters to be introduced into the supplemental bill which might have been incorporated in the original, by way of amendment; and this is especially proper, where the matter which occurred prior is necessary to the proper elucidation of that which occurred subsequently to the filing of the original bill; *Graves v. Miles*, Harring. Ch. 332; and when properly before the court, it is an addition to the original bill, and becomes a part of it, so that the whole is to be taken as one supplemental bill. *Gillett v. Hall*, 13 Conn. 426; *Cunningham v. Rogers*, 14 Ala. 147; *Potier v. Barclay*, 15 Ala. 439; *Harrington v. Slade*, 22 Barb. (N. Y.) 161.

A stranger to a suit in equity, claiming an interest therein, cannot interfere with the proceedings, without filing a supplemental bill to make himself a party. *Watt v. Crawford*, 11 Paige, 470; *Livingston v. Freeland*, 3 Barb. Ch. R. 510. And when a supplemental bill is filed, bringing new parties into court, it is as to them a new suit, and is to be considered as being commenced when the supplemental bill is pleaded in office. *Morgan v. Morgan*, 10 Geo. 297.

Where the plaintiff appears entitled to relief which cannot be based upon the original bill, the court may permit him to file a supplemental bill, setting forth the matter necessary to justify a complete decree; *Clifton v. Haig*, 4 Dessau. 330; but where new parties and new interests arising since the filing of the original bill, are to be brought before the court, the proper remedy is by an original in the nature of a supplemental bill; such bill is in effect the commencement of a new suit, but may in its consequences draw to itself the advantage of the proceedings on the former bill. *Bowie v. Minter*, 2 Ala. 406.

Where a female, who should have been party to the original bill, subsequently married, a supplemental bill was held to be necessary to bring her and her husband before the court; *Campbell v. Browne*, 5 Paige, C. R. 34; and where pending a bill, some of the complainants and defendants became bankrupt, and the same person is appointed assignee of both, he is properly made party defendant by supplemental bill of the remaining complainants; *Toulmin v. Hamilton*, 7 Ala. 362; and a purchaser of the rights of one of the parties pending the suit, will not be permitted to come in and take part in the proceedings without a supplemental bill, except by consent of the other parties. *Wilder v. Keeler*, 3 Paige, C. R. 164.

A supplemental bill to bring before the court matters which arose before the filing of the original bill, is improper; but an objection on that ground comes too late at the hearing after plea, answer, or demurrer; *Fulton Bank v. New York and Sharon Canal Company*, 4 Paige, C. R. 127; nor can the plaintiff, after the replication

[ \*402 ] any event subsequent to the institution of the suit, it may be added to by a supplemental bill merely.(5) Thus a supplemental bill may be filed to obtain a further discovery(6) from a defendant, to put a new matter in issue, or to add parties, where the proceedings are in such a state that the original bill cannot be amended for the purpose.(7) And this may be done as well after as before a decree; and the bill may be either in aid of the decree, that it may be carried fully into execution,(8) or that proper directions may be given upon some matter omitted in the original bill,(9) or not put in issue by it, or \*by the defence made to it;(10) or to bring formal parties before the Court;(11) or it may be used as a ground to impeach the decree, which is the peculiar case of a supplemental bill in the nature of a bill of review. But wherever the same end may be obtained by

(5) As a general rule it has been laid down, that events which have happened subsequently to the filing of the original bill ought not to be made the subject of amendment, but that they should be brought before the court by a supplemental bill; *Jones v. Jones*, 3 Atk. 217; *Pilkington v. Wignall*, 2 Madd. R. 244; *Usborne v. Baker*, *ibid.* 379, 388; but see *Knight v. Matthew*, 1 Madd. R. 572, in which case the Vice-Chancellor held, that where circumstances are introduced in an answer which have occurred subsequently to the filing of the bill, the plaintiff must be allowed to make amendments to the bill, so as to show that such new circumstances mentioned in the answer are not of the color the defendant represents them, and so as to obtain a complete answer to such circumstances. See also *Ld. Red. Tr. Pl.* p. 61, and note (e), *ibid.*

(6) *Usborne v. Baker*, 2 Madd. R. 387; *Boeve v. Skipwith*, 2 Ch. Rep. 142.

(7) *Goodwin v. Goodwin*, 2 Atk. 370.

(8) *Woodward v. Woodward*, 1 Dick. 33; and see 3 Atk. 133; or it may be filed by a tenant in tail in remainder to make himself a party to a former suit for the purpose of appealing against a decree obtained by fraud in such former suit against the prior tenant in tail; *Giffard v. Hort*, 2 Sch. & Lef. 386.

(9) *Dormer v. Fortescue*, 3 Atk. 132, 3.

(10) *Jones v. Jones*, 3 Atk. 109; and see 1 Jac. & W. 339.

(11) *Jones v. Jones*, 3 Atk. 217.

is filed, file a supplemental bill to bring before the court facts known to him before filing the replication. *Dias v. Merle*, 4 Paige, C. R. 259; see also, *Walker v. Gilbert*, 7 S. & M. 456. Although a bill is styled therein as a supplemental bill, and refers to prior proceedings and decrees, as facts on which to ground the claim for relief, but not praying a revision of any prior decree, yet it is not really a supplemental but an original bill. *Brooks v. Brooks*, 12 Gill & J. 306. New oral testimony, tending merely to corroborate evidence on the one side, or to contradict evidence on the other, on the points in issue, is not a sufficient foundation for a supplemental bill; *Jenkins v. Eldredge*, 3 Story, 299; and after a decree of dismissal to a bill, a supplemental bill to the original cannot be filed. *Burke v. Smith*, 15 Ill. 158. Where certain material facts are not stated in a bill, through the inadvertence, misapprehension, or mistake of the plaintiff, or his counsel, and which he supposed were stated, and by reason of the loss of a copy of the bill certain omissions were not brought to his knowledge until it was too late to amend the bill, it was held that a supplemental bill might be filed. *Dodge v. Dodge*, 9 Foster, (N. H.) 177.

A supplemental bill cannot be filed as a matter of course, but only by leave of court, and upon sufficient cause shown; *Tappan v. Evans*, 12 N. H. 330; *Pedrick v. White*, 1 Met. 76; *Kennedy v. Georgia State Bank*, 8 How. U. S. 586; *Winn v. Albert*, 2 Md. Ch. Decis. 42; but upon an *ex parte* application to file a supplemental bill, leave is granted of course, if probable cause for filing it is shown. The court examines the question only so far as to see that it is not intended for delay or vexation. *Eager v. Price*, 2 Paige, C. R. 333; see also, *Walker v. Hallett*, 1 Ala. N. S. 379; *Lawrence v. Bolton*, 3 Paige, C. R. 294; *Turner v. Berry*, 3 Gilman, 541. A supplemental bill, after a decree, must not seek to vary the principles of the decree, but, taking that as the basis, seek merely to supply any omissions there may be in it, or in the proceedings which led to it, so as to enable the court to give full effect to its decision. *O'Hara v. Shepherd*, 3 Md. Ch. Decis. 306.

amendment, the court will not permit a supplemental bill to be filed.(12)

When any event happens subsequently to the time of filing an original bill,(13) *which gives a new interest in the matter in dispute to any person not a party to the bill*, as the birth of a tenant in tail, or a new interest to a party, as the happening of some other contingency, the defect may be supplied by a bill which is usually called a supplemental bill, and is in fact merely so with respect to the rest of the suit, though with respect to its immediate object, and against any new party, it has in some degree the effect of an original bill. If any event happens which occasions any alteration in the interest of any of the parties to a suit, and does not deprive a plaintiff suing in his own right of his whole interest in the subject, as in the case of a mortgage, or other partial change of interest; or if a plaintiff suing in his own right is entirely deprived of his interest, but he is not the sole plaintiff, the defect arising from this event may be supplied by a bill of the same kind, which is likewise commonly termed, and is in some respects a supplemental bill merely, though in other respects, and especially against any new party, it has also in some degree the effect of an original bill. In all these cases the parties to the suit are able to proceed in it to a certain extent, though from the defect arising from the event subsequent to the filing of the original bill, the proceedings are not sufficient to attain their full object.(14)

A supplemental bill must state the original bill, and the proceedings thereon; and if the supplemental bill is occasioned by an event subsequent to the original bill, it must state that event, and the consequent alteration with respect to the parties; and in general, the supplemental bill must pray that all the defendants may appear and answer to the charges it contains. For if the supplemental bill is not for a discovery merely, the cause must be heard upon the supplemental bill at the same time that it is heard upon the original bill, if it has not been before heard; and if the cause has been before heard, it must be further heard upon the supplemental matter.(15) If indeed the alteration or acquisition of interest happens to a defendant or a person necessary to be made a defendant, the supplemental bill may be exhibited by the plaintiff in the original suit against such person alone, and may pray a decree upon the particular supplemental matter alleged against that person only; unless, which is frequently the case, the interest of the other defendants may be affected by that decree. Where a supplemental bill is

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(12) *Baldwin v. Mackown*, 3 Atk. 817; and see note (5), ante, p. 401.

(13) Such subsequent event must not only be relevant but material, see *Milner v. Lord Harewood*, 17 Ves. 144, 148, 2d edit.; and of such a nature that the relief sought in respect thereof cannot be obtained under the original bill; *Adams v. Dowding*, 2 Madd. R. 53; and see Lord Eldon's observations on the judgment of the Master of the Rolls in the case of *Mole v. Smith*, 1 Jac. & W. 665, upon exceptions to the Master's Report, Jac. R. 493, 5.

(14) Ld. Red. Tr. Pl. 63, and note (o), *ibid*.

Where a party by the present practice of the court may obtain that relief by petition for which a supplemental bill was formerly necessary, and prefers the latter course, the supplemental bill is not demurrable, but the proceeding will be taken into consideration on the question of costs, *Davies v. Williams*, 1 Sim. Rep. 5.

(15) 2 Madd. Rep. 60.

merely for the purpose of bringing formal parties before the court as defendants, the parties defendants to the original bill need not in any case be made parties to the supplemental.(16)

\*CXLII. *Supplemental bill by residuary legatees under a will after answers put in to the original bill,—one of the defendants a residuary legatee having since assigned his share by way of mortgage, and taken the benefit of the Insolvent Acts, the assignee under those acts and the personal representative of the mortgagee deceased are made parties. The original bill had stated that the testator's will had been proved, but such was not the fact, and two of the executors are also made parties defendants to the supplemental bill, (the other executor being one of the plaintiffs).*

To &c.

Original bill exhibited by the same plaintiffs, Stating the testator's will and codicil, And praying to have the usual accounts taken of the testator's estate, debts, &c.(one of the plaintiffs who had received part, offering to account;) that the clear residue might be ascertained, and that the executor might be charged with interest upon the balances retained by him; that the shares of

[ \*404 ]

the plaintiffs in one moiety might be ascertained and secured, that the share of a

Humbly complaining show unto your lordship your orators and oratrix James Y., John Y., G. Y., A. Y., R. Y., and M. Y., That your orators and oratrix on or about the — of —, 1824, exhibited their original bill of complaint in this honorable court against John Y., D. Y., M. L., M. Y., J. Y., and E. Y., which said bill after stating the will and codicil of the said testator G. Y. and other matters and things, prayed that an account might be taken by and under the direction of this honorable court of the personal estate and effects of the said testator possessed or received by the said defendant John Y. the executor, or by any other person by his order or for his use, or which without his wilful default might have been received, and of his the said testator's debts funeral and testamentary expenses and legacies, your orator James Y. being ready and willing to account for all sums of money received by him out of the personal estate of the said testator, and that the personal estate of the said testator might be applied in a due course of administration, and that the clear residue thereof might be ascertained, and that the said defendant John Y. the executor might be charged with interest upon such residue from the time he ought to have paid or invested the same, or at least upon so much of the said residue as belongs to your orators and the other children of your oratrix M. Y., and that the shares and proportions of your orators and the other children of the said M. Y. in one-half of such residue might be ascertained and paid or properly secured to them, and that the share of the said D. Y. the deceased child of the said M. Y. might be paid to his personal representative or \*properly secured, and that the other moiety of the said residue of the said personal estate might be paid or secured to the persons entitled thereto, and that a sufficient sum might be invested in the three per cent. consols, to answer the annual payment to which the said defendant M. L. is entitled under the said will of the said testator,



with liberty upon the death of the persons entitled to the said fund set apart to secure the same, to apply to this honorable court as they should be advised, and for further relief. And your orators and oratrix further show unto your lordship that all the said defendants appeared and put in their answers to the said bill. And your orators and oratrix further show that the said defendant John Y. by his answer admitted that he had in his hands the sum of £—— arising from the personal estate and effects of the said testator, and this honorable court by an order bearing date the —— day of —— 1825, directed the said defendant John Y. the executor to pay the said sum into court, and which hath been accordingly done and the said sum has under the said order been laid out in the purchase of £1924 14s. 9d. three per cent. consolidated bank annuities in the name of the Accountant-General of this honorable court, In trust in this cause. As in and by the said bill and answers order and other proceedings now upon the records of his honorable court will appear. And your orators and oratrix further show unto your lordship that the said defendant John Y. who is in the said original bill alleged to have proved the said will and codicil in the proper Ecclesiastical Court in this country, had not in fact done so at the time of filing the said original bill, and at the time of putting in his said answer thereto. But your orators and oratrix further show unto your lordship by way of supplement, that the said defendant John Y. has together with your orator James Y. and the defendant M. L. lately and since the time of putting in his said answer duly proved the said will and codicil in the proper Ecclesiastical Court in this country, and they the said defendant, John Y. your orator James Y. and the said defendant M. L. have obtained probate thereof and have thereby become the legal personal representatives of the said testator. And your orators further show unto your lordship that your orator James Y. who was at the time of filing the said original bill residing in A. has since arrived in this country, and having received and paid several sums of money while resident in A. and since the death of the said testator, and some of them since the filing of the said original bill, as one of the executors named in the said will of the said testator, your orator James Y. is ready and willing to account for such receipts and payments. And your orators and oratrix further show likewise by way of supplement, that before any further proceedings were had in the said cause an indenture of conditional assignment bearing date the —— day of —— 1826, was made and executed by and between the said defendant D. Y. one of the residuary legatees named in the will of the said testator of the one part, and J. D. of, &c. of the other part, whereby in consideration of the sum of £100 by the said J. D. paid to the said defendant D. Y. he the said D. Y. assigned unto the said J. D. his executors administrators and assigns all the part share and interest present or future vested or contingent of him the said defendant \*D. Y. in to or out of the said sum of 1924l. 14s. 9d. 3 per cent. consolidated bank annuities, and all other part share or interest of him the said defendant D. Y. of in to or out of the residuary personal estate of the said testator, with full power and authority in the name of

deceased child might be paid to his representative, and the other moiety secured for the parties entitled, and that a sufficient sum might be invested to answer an annuity given by the will.

All the defendants appeared and answered.

The executor admitting a balance to be in his hands, was ordered to pay the same into court, which sum was afterwards laid out in the purchase of stock in the Accountant General's name.

That John Y., although stated to have proved the will, had not so done.

Supplementary matter,— That the defendants John Y. and M. L. and also plaintiff James Y. have lately proved the will.

That plaintiff James Y. has lately arrived in England, and is willing to account for his receipts and payments.

Conditional assignment

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executed by D. Y. one of the defend-

ants, of his share as residuary legatee for securing money lent.

Death of the assignee.

His will appointing J. W. D. his executor, who has since proved the same.

That D. Y. has taken the benefit of the insolvent acts, and that his estate has been assigned to H. G. Prayer.

Prayer of process of subpoena.

the said defendant D. Y. to ask demand and sue and to give sufficient receipts for the said premises thereby assigned, To hold the same upon the trust following; that if the said defendant D. Y. should not upon demand pay to the said J. D. the said sum of 100*l*. and other such further sum and sums of money if any thereafter to be lent by the said J. D. to or on account of the said defendant D. Y. not exceeding in the whole together with the said sum of 100*l*. the principal sum of 200*l*. sterling, together with interest thereon respectively then due and owing, or should not in the meantime until such demand pay unto the said J. D. interest at the rate of 5 per cent. upon the said sum of 100*l*. and also upon such further sum or sums of money upon the times and on the days therein mentioned, Upon trust that the said J. D. should immediately upon such default or at any time or times thereafter raise and levy and pay to himself the sum of 100*l*., and also such further sums thereafter to be lent together with interest thereon and all expenses occasioned by the non-payment thereof, and after such payment in trust for the said defendant D. Y. As in and by the said deed when produced to this honorable court reference being thereunto had will appear. And your orators and oratrix further show unto your lordship that the said J. D. has since died having in his life-time duly made and executed his last will and testament in writing, and thereby appointed his son J. W. D. of, &c. his sole executor and constituted him his universal legatee; and the said testator J. D. died without revoking his said will, and the said J. W. D. hath proved the said will in the proper Ecclesiastical Court. And your orators and oratrix further show unto your lordship that the said defendant D. Y. hath since the execution of the said deed taken the benefit of the statutes for the relief of insolvent debtors, and the estate and effects of the said defendant D. Y. have been duly assigned unto H. G. of, &c. and such estate and effects are now vested in the said H. G.

To THE END therefore that the said defendant John Y. the executor and the said defendant M. L. and the said J. W. D. and H. G. may answer the matters hereinbefore charged by way of supplement, and that your orators and oratrix may have such and the same relief against the said defendant John Y. M. L. and J. W. D. and H. G. as by the said original bill is prayed against the said defendant John Y. and the said D. Y. the residuary legatee. May it please your lordship to grant unto your orators and oratrix his Majesty's most gracious writ or writs of subpoena to be directed to the said John Y. the executor M. L. J. W. D. and H. G. thereby commanding them at a certain day and under a certain pain therein to be inserted personally to be and appear before your lordship in this honorable court, and then and there to answer the premises. And your orators and oratrix shall ever pray, &c.

\*CXLIH. *Supplemental bill against the assignee of a bankrupt defendant.*

Humbly complaining show unto your lordship your orators A. B. and C. D. of —, That your orators did in or as of — Term — exhibit their original bill of complaint in this honorable court against B. L. of —, praying that an account might be taken of the personal estate, effects, &c. And your orators further show that the said defendant having been served with process to appear appeared accordingly and put in his answer to the said bill, and your orators replied to the said answer, but before any further proceedings were had in the said cause, and on or about the — day of — a commission of bankrupt under the great seal of Great Britain was awarded and issued against the said B. L. who hath been thereupon duly found and declared bankrupt; And E. D. of — the defendant hereinafter named having been since duly chosen assignee of the estate and effects of the said bankrupt, the major part of the commissioners named and authorized in and by the said commission have duly conveyed and assigned all the estate and effects late of the said bankrupt to the said E. D.; And therefore your orator is advised that he is entitled to the same relief against the said E. D., as he would have been entitled to against the said B. L. if he had not become bankrupt. To THE END therefore, &c. [*see form VI. p. 5, and interrogate to the statements.*]

Original bill exhibited.

The defendant appeared and put in his answer.

A replication filed.

Supplementary matters—commission of bankrupt issued against the defendant. E. D. chosen as assignee, and the usual conveyance and assignment since executed to him.

And that your orators may have the full benefit of the said suit and proceedings therein against the said E. D., and may have the same relief against him as your orators might or could have had against the said B. L. in case he had not become bankrupt; Or that your orators may have such further or other relief in the premises as to your lordship shall seem meet. May it please, &c. [*see form No. 1, p. 6.*]

Prayer.

CXLIV. *Supplemental bill to an original bill filed by a purchaser for specific performance of a contract stating that since publication has passed, it has been discovered that part of the property included in the particular of sale, and described as in the occupation of a tenant, was his own fee-simple, and praying that compensation may be allowed for the loss of such part, and for a reference to the Master accordingly.*

Humbly complaining sheweth unto your lordship your orator A. M. of, &c., That on or about — your orator exhibited his original bill of complaint in this honorable court against — the defendants hereto stating, &c. &c. and praying therefore that, &c. And your orator further sheweth that all the said defendants being duly served with process appeared and put in their answers to the said original bill

Original bill exhibited against the same defendants;

Answers put in, and publication passed. Supplementary matter,— That certain lands were described as in the occupation of C. J. a tenant to one of the defendants.

That part thereof was his own property in fee-simple, and that an allotment of inclosed land has been awarded to him in respect thereof.

Applications made to the defendants to make compensation.

Prayer.

\*and witnesses have been examined and publication hath been passed. As in and by, &c. And your orator further sheweth unto your lordship by way of supplement that in the printed particulars distributed at and previously to the said sale of the said manor and premises, and under which your orator purchased, C. J. esq. was therein described to be in possession as tenant to the said lord A. of — acres of land held for one life, called, &c. and of certain other lands held for two lives, making together with the said — acres of land — acres — roods and — perches; and the said printed particulars referred to a certain paper or terrier called the terrier of —, and in such terrier the said lands so held by the said C. J. which were thereby made to amount to the said quantity of — acres — roods and — perches were particularly described, and as part thereof were stated the six following articles, &c. &c. And your orator further sheweth by way of supplement that since publication hath passed in the said original cause your orator hath discovered, as the fact is, that although the said C. J. was in possession of the said — acres — roods and — perches yet as to — acres, part thereof, he held the same not as tenant to the said lord A. but as his own property in fee-simple (that is to say,) &c. &c. And your orator further sheweth that the said C. J. hath under a certain act of parliament made and passed in the — year of the reign of his present Majesty, intituled, “An act for enclosing lands in K. in the county of S.” claimed before the commissioners appointed thereby, and been allowed an allotment of land in respect of the said — acres as his own absolute property. And your orator further sheweth that having purchased the said manor and premises upon the faith and confidence that the said — acres — roods and — perches of land in the possession of the said C. J. were held by him as tenant of the said defendant lord A. according to the said printed particulars of sale, your orators since he hath discovered that the said — acres part thereof were the absolute property of the said C. J., hath repeatedly applied to the said defendants, and required them to make to your orator a reasonable compensation in respect thereof, with which just and reasonable requests your orator hoped that the said defendants would have complied, as in justice and equity they ought to have done. BUT NOW SO IT IS, may it please your lordship that the said defendants refuse so to do, pretending that the said — acres — roods and — perches were as described in the said particular of sale held by the said C. J. as tenant thereof to the said lord A. Whereas your orator charges the contrary thereof to be the truth. To THE END therefore that, &c. [see form VI. p. 5, and inter-rogate to the stating and charging parts.]

And that the said defendants may answer the premises; and that it may be referred to one of the masters of this honorable court to inquire what compensation your orator is entitled to in respect of the loss of the said — acres of land, and that such compensation together with interest thereon may be paid or satisfied out of the said sum of £——, if so much shall remain thereof after satisfaction of the demands of your orator claimed by the said original bill, or otherwise by the said defendant lord A., and that this your orator's bill of

\*complaint may be deemed and taken as and for a bill of supplement to his said original bill of complaint. [*And for further relief, see form VIII. p. 5.*] May it please, &c. [*see form No. 1, p. 6.*]  
J. L.

CXLV. *Supplemental bill to an original and amended bill filed by a lessee for the specific performance of an agreement to grant a further lease, stating that the defendant has brought an ejectment against the plaintiff, and praying an injunction to restrain his proceeding at law.*

Humbly complaining sheweth unto your lordship your orator J. K. of, &c., That in or as of — Term — your orator exhibited his original bill of complaint in this honorable court against H. B. S., and which said bill hath been amended by order of this honorable court, thereby praying that the said defendant might be decreed specifically to perform his agreement with your orator touching the lease of the farm and premises in the said bill mentioned, and to grant your orator a lease thereof for — years commencing from the expiration of his former lease, at the yearly rent of £—, your orator being willing and ready to do and perform everything on his part required to be done and performed in pursuance of the said agreement. And your orator further sheweth that the said defendant appeared and put in his answer to the said original bill. As by the said bill and answer now remaining as of record in this honorable court reference being thereunto had will appear. And your orator further sheweth by way of supplement that since the filing of the said original bill the said defendant hath caused an action of ejectment to be commenced in his Majesty's court of King's Bench at Westminster for the purpose of turning your orator out of possession of the said farm and premises, and the said action is still depending in the said court. And your orator being advised that the said defendant cannot support such action, and that your orator is entitled to a specific performance of the said agreement as prayed by his said amended bill, he has by himself and his agents several times applied to and requested the said defendant to desist from proceeding in the said action, and he was in hopes that he would have complied with such fair and reasonable requests as in justice and equity he ought to have done. BUT NOW SO IT IS may it please your lordship that the said H. B. S. refuses to comply with your orator's said requests, and insists upon proceeding in his said action and to turn your orator out of possession of the said farm and lands, to the manifest wrong and injury of your orator in the premises. To THE END therefore that, &c. [*see form VI. p. 5, and interrogate to the statements.*]

Original bill exhibited against the same defendant, and afterwards amended, praying the specific performance of an agreement to grant a lease of a farm.

Answer put in.  
Supplemental matter— That the defendant has brought an action of ejectment against plaintiff.

Applications made to the defendant to desist.

Refusal to comply.

And that the said defendant may be restrained by the injunction of this honorable court from proceeding in the said action, and from commencing any other action or proceeding at law for the purpose of turning your orator out of possession of the said farm and lands. Prayer.

[ \*409 ]

[*And for further relief, see form VIII. p. 5.*] May it please, &c.  
[*see forms No. 1, and 4, p. 6.*]

A. C.

*Pray subpoena and injunction  
against H. B. S.*

CXLVI. *Supplemental bill on the birth of the first tenant in tail.*

To, &c.

Original bill  
exhibited and  
afterwards  
amended.

That all the  
defendants  
have appear-  
ed and that  
some of them  
have put in  
their answers.

Supplemen-  
tary matter,—  
That the de-  
fendant J. L.  
has since had  
a son born  
who is the  
first tenant in  
tail in remain-  
der.

Prayer.

Complaining sheweth unto your lordship your orator G. O. Earl of E. of —, That on or about the — day of — your orator exhibited his original bill of complaint in this honorable court, which was by an order of this honorable court bearing date — duly amended, and such amended bill was exhibited against — as defendants thereto, thereby stating such several matters and things as are therein for that purpose now particularly mentioned and set forth, and praying, &c. And your orator further sheweth that all the said defendants having been duly served with process to appear, appeared, and that the said defendants W. Lord Viscount L., W. L. H. C. L. J. L. J. H. L. and G. L. have put in their answers to the said original and amended bill. As in and by, &c. And your orator further sheweth by way of supplement that since the filing of the said original and amended bill and on the — day of — last past the said defendant L. J. had a son born who has since been christened by the name of C. H. L.; And that the said C. H. L. is now the first tenant in tail in remainder of the said estates in the said bill mentioned under the limitations of the will of J. Earl of L. deceased the testator therein named. And your orator therefore is advised that he is entitled to have the same relief against the said C. H. L. as by the said original and amended bill is prayed against the said several parties thereto. To THE END therefore that the said C. H. L. may answer the premises; and that your orator may have such and the same relief against the said C. H. L. as in and by the said original and amended bill is prayed against the said several parties thereto. May it please, &c. [*Vide antea, p. 406, and form No. 3, p. 6.*]

J. L.

*Pray subpoena against C. H. L.*

[ \*410 ] \*\*CXLVII. *Supplemental bill on the birth of a daughter entitled as tenant in common in tail with another daughter, a defendant.*

Humbly complaining show unto your lordship your orators and oratrixes C. T. and F. his wife, late F. E. spinster, A. E. widow, the

honorable P. P. and G. his wife, the honorable T. M. and A. his wife, late A. P. spinster, A. P. and E. P. and L. P. infants, by the said T. P. their father and next friend, and Sir H. S. bart., That in or about the month of April — your orators and oratrixes exhibited their bill of complaint in this honorable court against J. W. R. D. H. D. and B. T. stating thereby the will of P. E. deceased, and the several other matters, whereby it appeared that your oratrix A. E. was tenant for life in possession without impeachment of waste, under the will of the said P. E. of an undivided moiety of certain estates in the counties of C., M. and M., and that your oratrix F. T. was tenant for life in remainder of such undivided moiety and tenant for life in possession without impeachment of waste of the other undivided moiety, with remainder as to the whole to her first and other sons in tail male, with remainder to her daughters as tenants in tail male, subject nevertheless to the payment of the debts of the said P. E., and further stating various matters, whereby it appeared that your orator and oratrix C. T. and F. his wife, and your oratrix A. E. had paid several of the debts so charged upon the said estates, in respect of which they were entitled to be creditors upon the said estates, and that large quantities of wood had been cut down upon the said estates, which was the property of your oratrixes A. E. and F. T. and which had been applied in payment of charges upon the said estates, and in respect of which your orator and oratrix C. T. and F. his wife and your oratrix A. E. were entitled to stand as creditors on the said estates, and stating that your oratrix F. T. had no son, but that the said B. T. was her only child, and was the first tenant in tail *in esse* of the said estates, and therefore praying that the said J. W. might be discharged from the further execution of the trusts of the said will, and might be decreed to convey or surrender the said trust estates to be held upon the trusts of the said will, and that your orators and oratrixes might have such further or other relief therein as to your lordship should seem meet. As in and by the said bill now remaining as of record in this honorable court, reference being thereunto had will more fully appear. And your orators and oratrixes further show that the several defendants to the said bill appeared and put in their answers thereto, but no further proceedings have been had in the said cause. And your orator and oratrix C. T. and F. his wife have since had issue another child, a daughter, named E. T., who is become tenant in common in tail with the said B. T. of the estates in the said bill mentioned, and who is become a necessary party to this suit. To THE END therefore that the said E. T. may answer the several matters stated in the bill of your orators and oratrixes hereinbefore mentioned, and also of the several matters hereinbefore stated, and that your orators and oratrixes \*may have the benefit of the said suit and proceedings and the same relief in respect thereof against the said E. T. as if she had been originally a party defendant thereto. May it please, &c. [*see form No. 1, p. 6.*]

Original bill  
exhibited.

Praying that a defendant might be discharged from the trusts under the will, and be decreed to surrender the trust premises.

That the defendant appeared and put in their answers.

That plaintiff C. T. and his wife have had issue another daughter, who

[ \*411 ]  
is become tenant in common in tail with another defendant.

Prayer.

*Pray subpoena against E. T.*

\*CXLVIII. *Supplemental bill by a surviving trustee, making a new trustee a defendant, who had been appointed in the room of a co-plaintiff deceased; the object of the suit being to obtain possession of the title-deeds which had been surreptitiously obtained by one of the defendants to the original and amended bill.*

In Chancery.

To, &c.

Humbly complaining sheweth unto your lordship your orator D. C. of, &c. That by a certain indenture, &c. [*stating articles dated August —, entered into between G. W. and C. S. previously to their marriage, whereby they covenanted to settle and convey certain real and personal property within six months after the death of F. C. the wife's father (who was tenant for life thereof,) to the plaintiff, and also to J. C. and R. S. as trustees;—the marriage, and the issue thereof, two children;—also stating two other indentures, whereby the life estate of G. W. expectant upon the decease of F. C. was conveyed to F. C. for —l.; the will of F. C. bequeathing the same to plaintiff and to J. C. and C. S. since deceased, In trust for the separate use of his said daughter S. W.; also stating the death of F. C. and probate of his will by plaintiff and the said J. C. and C. S.*]

And your orator further sheweth unto your lordship that your orator and also the said J. C. did in or as of Easter Term —, exhibit their original bill of complaint in this honorable court against the said G. W. and S. his wife R. S. and W. A. and A. B. as defendants thereby stating, &c. [*the deeds and matters aforesaid;*] and that the said C. S. had then departed this life, and that your orator and the said J. C. were then the legal personal representatives of the said F. C., and further stating that the said G. W. had by some means unknown to your orator and the said J. C. obtained possession of the title-deeds muniments evidences and writings of and relating to the real and personal estates and premises comprised in the said several indentures thereinbefore mentioned; and that the said G. W. had delivered same to the said W. A. and A. B., who held or claimed to hold, the same as the solicitors of the said G. W.; and that by virtue of the several indentures thereinbefore mentioned and of the will of the said testator F. C., your orator and the said complainant J. C. as such surviving trustees were entitled to have the custody and possession of all the said title-deeds and writings [*and then stating the applications and principal charges,*] And Praying that \*the said defendants G. W. W. A. and A. B. might be decreed to deliver up into the custody and possession of your orator and the said complainant J. C. as such surviving trustees as aforesaid the before mentioned deeds muniments evidences and writings, your orator and the said J. C. thereby offering to pay off and discharge to the said W. A. and A. B. any sum of money to which they might have a good valid and effectual lien in the law upon the said deeds

[ \*412 ]

Praying that the defendants might deliver up title-deeds to the plaintiffs as surviving trustees under a will,



muniments evidences and writings, if in fact any such lien existed. And that they the said W. A. A. B. and G. W. might be restrained by the injunction of this honorable court from delivering up to any person or parting with the possession of the before mentioned deeds muniments evidences and writings or any of them, and also praying general relief. And your orator further sheweth that the said defendants G. W. and S. his wife, W. A. A. B. and R. S. having been duly served with process of subpoena for that purpose, appeared to the said bill, and the said G. W. and S. his wife, W. A. and A. B. have since put in their answers thereto. As in and by the said bill and answers now remaining as of record in this honorable court reference being thereunto had will more fully appear. And your orator further sheweth that since the filing of the said bill and before the coming in of the said answers the said complainant J. C. departed this life. And your orator further sheweth that since the said answers have been put in your orator hath amended his said bill, thereby charging, &c. And your orator further sheweth by way of supplement to his said original and amended bill, that the said defendant G. W. and S. his wife have in pursuance of the power to them in that behalf given and reserved in and by the said indenture of the — day of August —, duly nominated and appointed W. N. of &c. to be a trustee of and for all the said trust estates and premises in the place and stead of the said complainant J. C. deceased, to act jointly with your orator in the execution of the trusts thereof; but no conveyance or assignment of the same trust estates and premises hath yet been made or executed to your orator and the said W. N.; and the said W. N. refuses to join with your orator in the prosecution of this suit, To THE END therefore that, &c. [see form VI. p. 5, and interrogate to the statements.]

And that the said W. N. may answer the premises, and may be decreed by this honorable court to concur and join with your orator in all necessary and proper acts and proceedings to obtain possession of the several title-deeds and writings of and relating to the trust estates and premises aforesaid, and for securing the same for the benefit of the several parties entitled thereto or interested therein under and by virtue of the said indenture of settlement. And that your orator may have such further and other relief in the premises as the nature of this case may require and to your lordship shall seem meet. May it please, &c. [see form No. 1, p. 6.]

*Pray subpoena against W. N.*

plaintiffs offering to discharge any valid lien which two of the defendants as solicitors might have thereon, and for an injunction to restrain the defendants from parting with the deeds.

The defendants appeared and put in their answers. Death of J. C. one of the plaintiffs.

That since the answers have been put in the bill has been amended.

Supplementary matter— That the defendants G. W. and S. his wife in pursuance of a power reserved to them have appointed W. N. to be a trustee in the place of J. C.

That no conveyance of the trust premises has been executed to W. N. and that he refuses to join in the suit.

Prayer.

## \*SECT. II.

BILLS OF REVIVOR.<sup>b</sup>

Wherever a suit abates by death, and the interest of the person whose death has caused the abatement is transmitted to that repre-

<sup>b</sup> Where a suit in equity abates by death or marriage, the proper means of restoring vitality to the cause is by bill of revivor by or against the person who comes in, in the same right of the original party. *Bowie v. Minter*, 2 Ala. 406; *Cullum v. Batre*, Ib. 415; see *Peyton v. McDowell*, 3 Dana, 314; *Holder v. Mount*, 2 J. J. Marsh. 187. And upon the abatement of a suit after decree, the defendant is in all cases entitled to revive if the adverse party will not, where he can derive a benefit from the further proceedings in the suit; *Anderson v. White*, 10 Paige, C. R. 575; but upon the death of the plaintiff, after a decree in favor of himself and others, the representatives of the plaintiff have the first right to revive; and where a bill of revivor was filed by a defendant in such case, the defendants were directed to show cause why the proceedings should not stand revived, unless the representatives of the plaintiff should apply for further time to decide whether they would revive. *Pell v. Elliot*, Hopk. 86.

A purchaser of the rights of a party to a suit, who subsequently dies, has a right to proceed with the old suit, by a bill of revivor and supplement; but if he allows that suit to drop, and institutes a new one, he cannot bind the defendant by any offer in his former answer; *Botte v. Cozine*, 1 Hoff. C. R. 79; and where a vendor of land having tendered a sufficient deed, files a bill for specific performance, and dies, his executor may revive without joining the heir. *Daniels v. Brodie*, 3 Edw. Ch. 275. Where a defendant died pending the suit, and the cause was heard and decided without its having been revived in the name of his heirs and representatives, the decree must be reversed. *Morgan v. Dickerson*, 1 Monr. 20; see also, *Grider v. Payne*, 9 Dana, 188. A decree in chancery cannot be revived against heirs by *sci. fa.* The proper method is by bill of revivor or petition in the nature of a bill of revivor; *Curtis v. Hawn*, 14 Ohio, 185; but where a mere revival of the suit is sought, a bill of revivor is not necessary; a *sci. fa.* is sufficient; *Vaughan v. Wilson*, 4 Hen. & M. 480; and where a suit is abated by the death of the complainant, who devises his interest in the property in controversy, the suit cannot be continued by a simple bill of revivor. In such cases an original bill, in the nature of a bill of revivor and supplement, must be filed, on which the question of title may be put in issue. *Douglass v. Sherman*, 2 Paige, C. R. 358; see also, *Anderson v. White*, 10 Id. 575. Upon the abatement of a suit, where the cause of action does not survive, the suit cannot be revived to settle a question of costs; *Johnson v. Thomas*, 2 Paige, C. R. 377; nor will a bill of revivor lie to revive a motion. *Hendrix v. Clay*, 2 A. K. Marsh. 462.

Where a suit in equity abates by the death of some of the defendants before decree, the proper course for the survivors, if they wish to speed the cause, is to move for an order that the complainant revive the suit within such time as shall be directed by the court, or that his bill be dismissed with costs; *Harrington v. Becker*, 2 Barb. Ch. R. 75; and where a party claiming an estate by inheritance, files a bill for the purpose of setting aside a will, and dies pending the suit, his devisee may file an original bill in the nature of a bill of revivor and supplement; and if his right as devisee be admitted or established, he will be entitled to the benefit of the proceedings in the original suit. *Bradly v. McCosker*, 1 Comst. 214. Where, by the death of the plaintiff, it becomes necessary to file a supplemental bill, in the nature of a bill of revivor, the court, to prevent the inconvenience of two bills, will permit the introduction into such bill of other supplemental matter than that which is necessary for the revival of the suit. *Manchester v. Matthewson*, 2 R. I. 416.

Upon a bill to revive, the sole questions before the court are the competency of the parties, and the correctness of the frame of the bill to revive; *Bettes v. Dana*, 2 Sumner, 383; and where a suit is improperly revived, or the complainant has no right to revive it, the objection may be made at the hearing; *Douglass v. Sherman*, 2 Paige, C. R. 358; and it seems that the same objections which might be raised by plea or demurrer to a bill of revivor, may be shown in opposition to a petition to revive under the statute. *Washington Insurance Company v. Slee*, 2 Paige, C. R. 365. But where supplementary matter is improperly added to a bill of revivor, the defendant

sentative which the law gives or ascertains, as an heir at law, executor, or administrator, so that the title cannot be disputed at least in the court of Chancery, but the person in whom the title is vested is alone to be ascertained, the suit may be continued by bill of revivor merely. If a suit abates by marriage of a female plaintiff, and no act is done to affect the rights of the party but the marriage, no title can be disputed; the person of the husband is the sole fact to be ascertained, and therefore the suit may be continued in this case by bill of revivor merely.(1)

Where one of several plaintiffs dies before answer, the surviving plaintiffs may be compelled to revive the suit within a limited time or must submit to have the bill dismissed.(2)

A bill of revivor must state the original bill, and the several proceedings thereon, and the abatement; it must show a title to revive,(3) and charge that the cause ought to be revived, and stand in the same condition with respect to the parties in the bill of revivor as it was in with respect to the parties to the original bill at the time the abatement happened; and it must pray that the suit may be revived accordingly. It may be likewise necessary to pray that the defend-

(1) Ld. Red. Tr. Pl. p. 69, 4th edit.

The court after abatement of a suit, has acted without revivor in some instances where the rights of the parties have been fully ascertained by decree, or by subsequent proceedings, as in ordering the payment of money out of court, or the delivery of deeds and writings, *Beard v. Earl of Powis*, 2 Ves. 398; *Roundell v. Currer*, 6 Ves. 250; but in general revivor is necessary to warrant any proceedings after abatement, *Wharam v. Broughton*, 1 Ves. 179, 182, 5; except proceedings to compel revivor, or to prevent injury to the surviving parties, if the persons entitled to revive neglect to do so. Ld. Red. Tr. Pl. p. 77, 4th edit. note (m). 2 Madd. Ch. Pr. 536.

(2) *Adamson v. Hall*, Turn. R. 258.

(3) A bill of revivor should only contain so much new matter as is necessary to show the right to revive; if it contains more, it is demurrable; 2 Madd. Ch. Pr. 534.

cannot on that account, demur to the whole bill, but should demur to the supplemental matter only. *Randolph v. Dickerson*, 5 Paige, C. R. 517. In case of the death of the defendant in a bill for the conveyance of land, the bill ought to be revived against his heirs, devisees, and all other persons claiming under the deceased, or in any manner interested in the land; *Key v. Lambert*, 1 Hen. & M. 330; and process to revive it cannot issue until the names of the representatives of the deceased are furnished to the clerk, in whose names alone the suit can be revived; *Anonymous*, 4 Hen. & M. 410; see also, *Pickering v. Walcott*, 1 Smith, 128; and where there are absent and home defendants, there must be process of revival against the absent as well as the home defendants, and publication of notice thereupon. *Yates v. Payne*, 4 Hen. & M. 412. The party against whom a suit is revived is allowed one term after the return of process, to prepare for trial; *Minor v. Jones*, 4 Hen. & M. 480; but the party revived against may waive such privilege; *Chew v. Doe*, 4 Hen. & M. 489; and the necessity of filing a bill of revivor to make the representative of a deceased complainant a party to the suit, may be waived by agreement between such representative and the defendant. *Boog v. Byley*, Charl. R. M. 190. The proper office of a bill of revivor and supplement, is to revive a suit that has abated, and to supply defects in the original bill arising from subsequent events; but the supplemental matter must have been newly discovered and verified by affidavit. *Bowie v. Minter*, 2 Ala. 406; see also, *Pendleton v. Fay*, 3 Paige, C. R. 204. In a suit for a rescission of contract for land, where the complainant dies, it should be revived in the name of the heirs, and not of the executors only; and when the defendant dies, all his heirs should be served with process, or make answer; *Kincart v. Sanders*, 2 A. K. Marsh. 26; and it is erroneous to revive a cause and proceed to a decree where process has not been served. *Sweets v. Biggs*, 5 Litt. 17; see also, *Stout v. Higbee*, 4 J. J. Marsh. 632; *Barnes v. Smith*, 5 Id. 311. The answer to a bill of revivor cannot dispute the merits of the decree. *Arnold v. Styles*, 2 Blackf. 391.

[ \*414 ] ant may answer the bill of revivor as in the case of a requisite admission of assets by the representative of a deceased party. In this case, if the defendant does admit assets, the cause may proceed against him upon an order of revivor merely; but if he does not make that admission, the cause must be heard for the purpose of obtaining the necessary accounts of the estate of the deceased party to answer the demands made against it by the suit; and the prayer of the bill therefore in such case usually is, not only that the suit may be revived but also that in case the defendant shall not admit \*assets to answer the purposes of the suit, those accounts may be taken, and so far the bill is in the nature of an original bill. If a defendant to an original bill dies before putting in an answer, or after an answer to which exceptions have been taken, or after an amendment of the bill to which no answer has been given, the bill of revivor, though requiring itself no answer, must pray that the person against whom it seeks to revive the suit may answer the original bill, or so much of it as the exceptions taken to the answer of the former defendant extend to, or the amendment remaining unanswered.(4)

If a decree be obtained against an executor for payment of a debt of his testator and costs out of the assets, and the executor dies, and his representative does not become the representative of the testator, the suit may be revived against the representative of the testator, and the assets of the testator may be pursued in his hands, without reviving against the representative of the original defendant.(5)

After a decree a defendant may file a bill of revivor, if the plaintiffs or those standing in their right, neglect to do so;(6) for then the rights of the parties are ascertained, and plaintiffs and defendants are equally entitled to the benefit of the decree, and equally have a right to prosecute it.(7)

In the case of a bill by creditors on behalf of themselves and other creditors, any creditor (who has proved his debt) is entitled to revive.(8)

A suit become entirely abated may be revived as to part only of the matter in litigation, or as to part by one bill, and as to the other part by another. Thus if the rights of a plaintiff in a suit upon his death become vested, part in his real and part in his personal representatives, the real representative may revive the suit so far as concerns his title, and the personal so far as his demand extends.(9)

A suit is not abated by the death or outlawry of a *relator*; but in

(4) *Ld. Red. Tr. Pl. p. 76.*

(5) *Ld. Red. Tr. Pl. p. 78; Johnson v. Leake or Peck, 2 Ves. 464. 3 Atk. 773.*

(6) *Williams v. Cook, 10 Ves. 406; and see Horwood v. Schmedes, 12 Ves. 311.*

(7) See however *Horwood v. Schmedes*, ub. sup., *Anon.*, 3 Atk. 691; *Lord Stowell v. Cole, 2 Vern. 296.*

(8) *Ld. Red. Tr. Pl. p. 79, and note (1);* in such a suit if one of the plaintiffs dies after a decree, his personal representative has a right to revive, *Burney v. Morgan, 1 Sim. & Stu. 358; and where one creditor filed a bill on behalf of himself and other creditors, and a decree was made, and the plaintiff afterwards died, the Vice-Chancellor held, that another creditor might obtain an order to file a supplemental bill, if the representatives of the deceased plaintiff did not revive within a limited time, Dixon v. Wyatt, 4 Madd. 392.*

(9) *Ld. Red. Tr. Pl. p. 80.*

such case the court suspends further proceedings until another relator is appointed.(10)

A bill of revivor of a bill of revivor lies.(11)

\*CXLIX. *Bill of revivor, (before decree) by the administrator of the plaintiff in the original suit, the executors named in his will having renounced probate.* [ \*415 ]

Humbly complaining sheweth unto your lordship your orator C. D. of, &c., That J. A. late of, &c. but now deceased, on or about — exhibited his original bill of complaint in this honorable court against G. T. W. as the defendant thereto, thereby stating such several matters and things as are therein for that purpose more particularly mentioned and set forth, and praying, &c. And your orator further sheweth that process duly issued against the said defendant, but he being in Ireland and out of the jurisdiction of this honorable court he neither appeared nor put in his answer to the said bill. And your orator further sheweth that by an order bearing date on or about the — day of — upon the said J. A. consenting, &c. And your orator further sheweth that process was sued out and served in pursuance of such order, and that the said defendant thereupon appeared and put in his answer to the said bill of complaint. And your orator further sheweth that on or about the — day of — the said defendant caused this honorable court to be moved, that he might be at liberty to sue out execution against the said complainant J. A. in the aforesaid action, and thereupon the said J. A. consenting by his counsel, &c. And your orator further sheweth that in pursuance of the said order the said sum of £ — was by the time therein directed paid into the bank with the privy of the Accountant-General, and was afterwards laid out by him in the purchase of £ — three per cent. consolidated bank annuities, which are now standing in the name of the said Accountant-General, in trust in this cause, together with a sum of £ — in cash, which hath arisen from the dividends thereof. As in and by the said original bill, &c. And your orator further sheweth that some proceedings have been had before the said Master to whom this cause stands referred, but no general report hath yet been made in the said cause; and that the said J. A. lately and on or about — departed this life having first made and published his last will and testament in writing, bearing date —, and a codicil thereto bearing date —, and thereby appointed M. C. and W. W. executors thereof. And your orator further sheweth that the said M. C. and W. W. have renounced probate of the said will and codicil of the said J. A. deceased, and declined to act in the trusts thereof, and that your orator hath obtained letters of administration with the will annexed of the goods chattels

Original bill exhibited by J. A.  
The defendant being out of the jurisdiction, neither appeared nor answered.  
An order made under which an appearance was entered and answer put in.  
That in pursuance of an order obtained by the defendant, the plaintiff J. A. paid in a sum of — £, which was invested in the Accountant General's name.  
Proceedings had before the Master, but his general report not yet made.  
Death of the plaintiff, having made a will and codicil, appointing two executors who have since renounced probate.

(10) See the authorities collected in note (a), 1 Swanst. 305.

(11) Hardr. p. 201. See further on the subject of bills of revivor, 2 Madd. Ch. Pr. 526, et seq.; *Bolton v. Bolton*, 2 Sim. & Stu. 371; *Gordon v. Bertram*, 1 Mer. 154.

Administra-  
tion granted  
to the plain-  
tiff;

[ \*416 ]  
his title to re-  
vive, and to  
have the ac-  
counts direct-  
ed, prosecuted  
and carried  
on,  
Prayer.

rights and credits of the said J. A. deceased to be granted to him by and out of the proper Ecclesiastical Court, and hath thereby become and now is his legal personal representative. And your orator further sheweth that the said suit and proceedings having become abated by the death of the said J. A., your orator is, as he is advised, as the personal representative of the said J. A., entitled to have the said suit and proceedings revived against \*the said defendant G. T. W., and the said accounts by the aforesaid order directed, prosecuted and carried on, and to have the said cause put in the same state and condition as the same was in previously to the death of the said J. A.

To the end therefore that the said defendant may answer the pre-  
mises ; and that the said suit and proceedings which so became abated  
as aforesaid may stand revived, and be in the same plight and condi-  
tion as the same were in at the time of the death of the said J. A.,  
or that the said defendant may show good cause to the contrary.  
May it please, &c.

*Pray subpoena to revive and answer  
against G. T. W. (12)*

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CL. *Bill of revivor upon the marriage of the female plaintiff.*

Original bill  
exhibited.

Defendants  
appeared and  
answered.

Exceptions tak-  
en to the an-  
swer of one of  
the defendants  
which were  
allowed by the  
Master.

Order obtain-

Humbly complaining show unto your lordship your orator and  
oratrix A. B. of —, and E. his wife, That on or about — your  
oratrix by her then name of E. M. exhibited her original bill of  
complaint in this honorable court against — and W. M. as de-  
fendants thereto, thereby stating such several matters and things  
as are therein for that purpose more particularly mentioned and  
set forth, and praying, &c. And your orator and oratrix further show  
that the said several defendants being duly served with process of  
subpœna severally appeared and put in their answers to the said  
original bill. As in and by, &c. And your orator and oratrix  
further show that your oratrix took several exceptions to the answer  
put in by the said defendant W. M. to the said original bill, and which  
said exceptions were upon argument allowed by the Master to whom  
the same were referred. And your orator and oratrix further show  
that your oratrix afterwards obtained an order of this honorable

(12) May it please your lordship to grant unto your orator his Majesty's most  
gracious writ of subpœna to revive [*and answer*] issuing out of and under the seal  
of this honorable court to be directed to the said G. T. W. thereby commanding him  
at a certain day and under a certain pain to be therein limited personally to be and  
appear before your lordship in this honorable court, and then and there [*to answer the  
premises and*] to show cause if he can why the said suit and proceedings therein  
had should not stand and be revived against him, and be in the same plight and condi-  
tion as the same were at the time of the abatement thereof, and further to stand  
to and abide such order and decree in the premises as to your lordship shall seem  
meet. And your orator shall ever pray, &c.

Where it is only necessary to pray a subpœna to revive, the words within brackets  
should be omitted.

court to amend her said original bill, and that the said defendant W. M. might answer the said amendments at the same time that he answered the said exceptions. And your orator and oratrix further show that before the said W. M. had put in his answer to the said exceptions or any further proceedings were had in the said suit, and on or about the — day —, your oratrix intermarried with \*your orator W. M. whereby the said suit and proceedings became abated. And your orator and oratrix are advised that they are entitled to have the same revived, and to be put in the same plight and condition as the same were in at the time of the abatement thereof. To the end therefore that the said suit and proceedings which so became abated as aforesaid may stand revived, and be in the same plight and condition as the same were in at the time of such abatement, or that the said defendants may show good cause to the contrary. May it please, &c.

ed to amend the bill and that the defendant might answer the amendments and exceptions at the same time.

[ \*417 ]

Marriage of the plaintiffs, and title to revive.  
Prayer.

J. L.

*Pray subpoena to revive against all the defendants; see note (12), antea, p. 416.*

CLI. *Bill of revivor in a suit for tithes, against the personal representative of one of the defendants who had died before putting in his answer to the original bill.*

In the Exchequer.

To, &c.

Humbly complaining sheweth unto your honors your orator E. B. of, &c. debtor, &c. [*as in form No. 2, antea, p. 2,*] That in or about — vacation your orator exhibited his original bill of complaint in this honorable court against —, thereby stating as the truth is that the said defendants then and for some time previously thereto, were occupiers of lands therein, and had various titheable matters growing, arising and produced on their said lands which they had subtracted and withheld from your orator, and praying that, &c. As in and by, &c. And your orator further sheweth that all the said defendants appeared to the said bill of complaint, and that the said J. B. and W. H. put in their answers thereto, but that the said T. F. had departed this life intestate on or about — before any further proceedings were had in the said cause, without having put in any answer to the said bill of complaint, whereupon the said suit and proceedings became abated as to him. And your orator further sheweth that J. F. of — the father of the said T. F. hath procured letters of administration of the personal estate and effects of the said T. F. to be granted to him by the proper Ecclesiastical Court, and hath possessed the personal estate and effects of the said T. F. to a considerable amount, and sufficient to pay the debts and funeral expenses of the said T. F., and is thereby become and now is his legal personal representative; And your orator is advised that he

Original bill exhibited by the same plaintiff against several defendants.

All the defendants appeared.

Death of one without having answered.

His father took letters of administration to him, and possessed assets sufficient to pay his debts.

Title of the plaintiff to revive.

That the defendant ought to admit assets, or account for the personal estate.

[ \*418 ]

is entitled to have the said suit revived against the said J. F. in the same plight and condition as it was at the time of the abatement thereof by the death of the said T. F.; and that the said J. F. ought to answer the said original bill of complaint, and ought either to admit assets of the said T. F. sufficient to satisfy your orator's demands \*claimed by the said original bill, or to discover and account for his personal estate as is usual in such cases. To THE END therefore that the said suit and proceedings may stand and be revived, and be in the same plight and condition as the same were at the time of the said abatement thereof; and the said J. F. may upon his oath and according to the best of his knowledge, remembrance, information and belief, full, true and perfect answer make to all and singular the matters and things in the said original bill stated, and that he may either admit assets of the said T. F. possessed by him sufficient to answer and satisfy the demands of your orator, or that he may in manner aforesaid answer and set forth a full, true and just account of all and singular the personal estate and effects which the said testator was possessed of, interested in or entitled to at the time of his death, and all the particulars whereof the same consisted, and the natures, kind, quantities, qualities, full true and utmost value of all and singular such particulars, and whether all or some and which of such particulars have not and when been possessed by the said defendant or by any person or persons and whom by name by his order or for his use, and how and in what manner and when and where and by whom and to whom and for how much the same and each and every part thereof have or hath been sold and disposed of; And whether any and what part or parts thereof and of or to what value and amount now remain undisposed of.

Prayer.

And that the said suit and proceedings so abated as aforesaid may be revived, and be in the same plight and condition as the same were at the time of the abatement thereof, or that the said defendant J. F. may show good cause to the contrary; and that your orator may have the benefit of the said suit, and may have the same relief against the said defendant as is prayed by the said original bill of complaint; and that if the said defendant shall not admit assets of the said T. F. possessed by him sufficient to answer the said demands of your orator against the estate of the said T. F., then that an account may be taken of the personal estate and effects of the said T. F. which have been possessed, got in and received by the said defendant J. F. or by his order or for his use, or which without his wilful default might have been got in, possessed or received, and that the same may be applied in discharge of such sum of money as may appear to be due and owing to your orator from the estate of the said T. F. in respect of the matters in the said bill of complaint mentioned. May it please, &c.

*Pray subpoena to revive and answer against  
J. F.; see note (12), antea, p. 416.*



**\*\*CLII.** *Bill of revivor by trustees and executors against the customary heir of one of the original defendants who was the customary heir of the testator and had died without having answered the original bill, the object of the suit being to carry the trusts of the will into execution.*

To &c.

Humbly complaining show unto your lordship your orators R. B. of —, W. P. D. of —, H. D. of —, and G. W. of —, trustees and executors named and appointed in and by the last will and testament of J. B. deceased, late of —, That your orators in or about — Term exhibited their bill of complaint in this honorable court against F. B. M. B. J. M. B. J. S. B. E. C. B. the reverend W. H. W. and H. H. his wife, C. B. V. and E. his wife, J. B. and L. B. thereby stating (amongst other things) that the said J. B. by his will bearing date the 31st day of May —, gave and devised all his real estates being partly freehold and partly copyhold, and the general residue of his personal estate to your orators their heirs executors administrators and assigns, upon certain trusts therein declared concerning the same, and stating that the said testator shortly after departed this life without having revoked or altered his said will, leaving J. B. one of the defendants thereto the eldest son of L. B. deceased, the eldest brother of the said testator, his heir at the common law, and leaving the said L. B. his youngest brother his heir according to the custom of the said manor of C. of which the said copyhold estates were holden, and stating that your orators as the executors appointed in the said testator's will, duly proved the same in the proper Ecclesiastical Court, and took upon themselves the execution thereof, and were desirous of carrying into effect the said trusts of the said testator's will, but that by reason of difficulties which have been suggested in the construction thereof, they were advised that they could not safely execute the trusts thereof except under a decree of this honorable court; and praying that the will of the said J. B. might be established, and the trusts thereof performed and carried into execution under the decree of this honorable court, and that an account might be taken of the personal estate and effects of the said testator and of his real estates, your orators submitting to account for their receipts and payments in respect thereof, and that an account might also be taken of the said testator's funeral and testamentary expenses debts legacies and annuities; and that the said testator's real estate might be sold, and that the said testator's personal estate and the proceeds of his said real estate when sold might be applied in a due course of administration, and that if it should appear upon taking such accounts that the said testator's assets were not sufficient after payment of the said testator's funeral and testamentary expenses and debts, to pay all his legacies and annuities in full, then that it should be declared whether all or which of the said legacies and annuities given by the said will

Original bill exhibited by the same plaintiffs as executors and trustees. Stating the testator's will.

His death without revoking or altering the same, leaving his nephew his heir at law, and his youngest brother his customary heir; Probate of the will by the plaintiffs; That difficulties had arisen in the execution of the trusts; and praying that the will might be established, and the trusts performed; that an account might be taken of the personal estate, and of the real estate, the plaintiffs submitting to account; that an account might be taken of

[ \*420 ]  
 the testator's debts, legacies, and annuities; that the real estates might be sold, and the produce together with the personal estate duly applied; that if the assets should not prove sufficient to pay the legacies and annuities, then that it might be declared which should abate, and that all proper accounts and enquiries might be directed. That all the defendants appeared and answered, except the customary heir. His death leaving his youngest son his customary heir, claiming

were liable to abatement, and that all proper \*accounts and inquiries might be directed for effectuating the purposes aforesaid and carrying into execution the trusts of the said will, and also praying for further relief. And your orators further show unto your lordship that all the said defendants appeared to the said bill, and all the said defendants except the said L. B. put in their answers thereto, but that before any further proceedings were had in the said suit, the said suit became abated by the death of the said L. B. the customary heir of the said testator, who departed this life on the — day of — 1823, leaving the defendant E. C. B. his youngest son and heir according to the custom of the said manor, who accordingly claims such interest in the matters in question in this suit as were vested in the said L. B. as such customary heir as aforesaid; and your orators are advised and humbly insist that they are entitled to have the said suit and proceedings revived against the said E. C. B. as the copyhold heir of the said L. B. deceased and heir to the said copyhold estates according to the custom of the said manor of C. in the same plight and condition as the same were at the time of the death of the said L. B. To the end therefore that the said suit and proceedings therein may stand revived against the said E. C. B., and be in the same plight and condition as the same were at the time of the said abatement. And that the said E. C. B. as such customary heir as aforesaid may answer your orator's said original bill and also the present bill of revivor, and that your orators may have the benefit of the said suit and all the proceedings therein. May it please, &c.

*Pray subpoena to revive and answer the original bill and bill of revivor against E. C. B. see note (12), antea, p. 416.*

the same interest as the deceased. The plaintiff's title to revive. Prayer.

### CLIII. *Bill of revivor by the executor of the plaintiff in a cross bill against the defendants thereto, two of them not having answered.*

To, &c.

Original bill exhibited by G. J. and his wife,

Praying that he in her right might be declared entitled under the trusts of a

Complain(13) sheweth unto your lordship your orator the most honorable J. B. W. G. Marquis of S., That in or about the month of April 1822, G. J. of, &c. esq. and C. his wife, formerly C. S. spinster, exhibited their bill of complaint in this honorable court against B. G., E. H., W. A. H., A. S. and H. S. S., stating as therein stated, and praying that the said G. J. and C. his wife in right of the said C. J. might be declared by the decree of this court to be entitled under the covenant and trusts of an indenture therein mentioned, bearing date the 5th of May 1773, to one full third part or share of the sum of £5674, 3 per cent. consolidated bank annuities, and that

(13) See note (c), antea, p. 2.

\*the said B. G. might be directed to transfer the same to the said G. J. in right of his said wife for his own use and benefit, and that they the said G. J. and C. his wife might in like manner be declared entitled to one-third part of the dividends or interest that had accrued on the said sum of 5674*l.* 3 per cent. consolidated bank annuities from the month of December 1791, and that an account might be taken under the directions and decree of the court of the said dividends and interest from the time last-mentioned which had been or which might have been received by T. H. therein mentioned, and the said B. G. or either of them, or with their knowledge privity and concurrence during the life of the said T. H. or since his decease by the said B. G.; and that the said E. H. and W. A. H. might be declared to make good such parts of the said dividends as should appear to have been received by or which ought to have been received by their testator the said T. H. out of the said assets of the said T. H., and that they might admit assets of the said testator sufficient for that purpose, or that an account might be taken of the estate and effects of the said T. H. come to their or either of their hands, and of the application thereof. And that the said B. G. might be decreed to make good out of his own proper moneys what should be found due to the said complainants in respect of the said dividends and interest of the said sum of 5674*l.*, 3 per cent. consolidated bank annuities that had been or that might or ought to have been received, and which had been accordingly applied by him or with his knowledge privity or concurrence, and that it might be referred to one of the Masters of this honorable court to take the said accounts, and praying for further relief. And your orator further sheweth unto your lordship that the said defendant B. G. appeared to the said bill and put in his answer thereto, and the same bill having been amended, the said defendant appeared to the said amended bill, and put in a further answer thereto. As in and by the said bill and answers now as of record in this honorable court, reference being thereto had will appear. And your orator further sheweth unto your lordship that on or about the 17th of April 1823, the said B. G. exhibited his bill of complaint in this honorable court against the said G. J. and C. his wife and the said A. S., thereby stating such several matters and things as are therein for that purpose stated, and praying that it might be declared by the decree of this honorable court that the said G. J. and C. his wife were not entitled under the circumstances thereinbefore stated to call upon the said B. G. to make good the dividends upon the said sum of 5674*l.* 3 per cent. consolidated bank annuities received by the said C. S. or any part thereof, or if it should appear to this honorable court that the said B. G. was liable to make satisfaction for the same or any part thereof, then that the said B. G. might be declared entitled to be repaid such sum as he should be obliged to pay in respect of the aforesaid claim out of the assets of the said testator C. S. come to the hands of the said A. S. as his personal representative, or of any other person by his order or for his use; and that the said A. S. might admit assets of his said testator S. C. sufficient for that purpose \*or otherwise that an account might be taken of the personal

deed to one third of a sum of stock and the dividends thereof;

that an account might be taken of the arrears accrued due received by T. H. deceased and B. G.

That the executors of T. H. might be decreed to make good so much as was received by him, and might admit assets sufficient for that purpose, or that the usual accounts might be taken; that B. G. might be decreed to make good so much as had been or might have been received by him;

And for a reference to a Master to take the accounts. B. G. appeared and answered; and afterwards the bill was amended, to which he appeared and answered.

Cross bill exhibited by B. G. against G. J. and his wife, and A. S. praying that it might be declared that G. J. and his wife were not entitled to call upon B. G. to make good

the dividends received by C. S., or if B. G. was liable, then that he might be repaid the same by the personal representative of C. S. out of his assets, and for the usual accounts thereof.

That the defendants appeared, and G. J. alone put in his answer. Death of B. G. having appointed the plaintiff by his will sole executor, who has since proved the same

Title to revive the proceedings in the cross suit.  
Prayer.

estate and effects of the said C. S. received by the said A. S. or by his order or for his use, or which without his wilful neglect might have been received by him, and of the application thereof, and that the said testator's personal estate might be applied so far as the same would extend in satisfaction to the said B. G. of what he should be compelled to pay to the said G. J. and C. his wife in respect of their aforesaid claims, and also praying for further relief. And your orator further sheweth unto your lordship that the said G. J. and C. his wife and A. S. being duly served with process appeared to the said bill, and the said G. J. alone put in his answer thereto. As in and by the said bill and answer now as of record in this honorable court, reference being thereunto had will appear. And your orator further sheweth that before any further or other proceedings were had in the said cause the said B. G. departed this life, having first duly made and published his last will and testament in writing bearing date on or about the — day of —, and thereof appointed your orator sole executor, and your orator hath since his decease duly proved the said will in the proper Ecclesiastical Court, and thereby become his legal personal representative. As in and by the said will or the probate thereof when produced will appear. And your orator further sheweth that the said suit and proceedings having become abated by the death of the said B. G., your orator is, as he is advised, as the personal representative of the said B. G., entitled to have the same suit and proceedings revived against the said G. J. and C. his wife and the said A. S. to the same plight and condition in which the same were at the time of the death of the said B. G. To the end therefore that the said suit and all the proceedings therein may stand revived against the said G. J. and C. his wife and the said A. S., and be in the same plight and condition as the same were at the time of the said abatement, or that the said defendants may show good cause to the contrary; and that the said C. J. and A. S. may answer the said original bill, and that your orator may have the benefit of the said suit and of all the proceedings therein. May it please, &c.

*Pray subpoena to revive and answer against G. J. and C. his wife, and A. S. see note (12), antea, p. 416.*

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CLIV. *Bill of revivor (after a decree) against the surviving executor of one of the defendants since deceased.*

Original bill exhibited.

States that some time in or about — Term — L. P. now deceased exhibited his original bill of complaint in this honorable court against S. N. and E. his wife, &c. &c., stating as therein is stated and praying that, &c.

That the said S. N. and E. his wife being duly served with process  
[ \*423 ] \*appeared and put in their answers to the said bill, but before any further or other proceedings were had in the said cause, the said

L. P. departed this life intestate, leaving R. P. her son and heir at law, who after her decease duly administered to her, and thereby became her legal personal representative.

That the said suit and proceedings having become abated by the death of the said L. P., *plaintiff* exhibited his bill of revivor in this honorable court against —, praying that the said suit and proceedings might be revived against the said R. P. and by an order of the court the same were accordingly revived.

That all the said defendants having put in their answers to the said bill, the same came on to be heard before his honor the late Master of the Rolls on or about, &c. when his honor did order and decree, &c.

That before any further or other proceedings were had in the said cause the said S. N. departed this life, having first duly made and published his last will and testament in writing dated —, and thereof appointed his said wife E. N. and the defendant T. R. executrix and executor thereof, who duly proved the said will in the proper Ecclesiastical Court and took upon themselves the burthen of the execution thereof, and the said E. N. hath since also departed this life leaving the said defendant T. R. her surviving, and who is now the sole personal representative of the said S. N. deceased, and as such entitled to the principal sum of £—— and interest due from the said G. H. to the said S. N. and secured by way of mortgage upon his the said C. H.'s share of the said estate and premises in the pleadings mentioned for a term of — years; and the said suit and proceedings having become abated by the death of the said S. N., *plaintiff* is advised that he is entitled to have the same revived against the said T. R. as his surviving executor.

To the end therefore that the said suit and proceedings which became so abated by the death of the said S. N. may stand and be revived against the said T. R., and be in the same plight state and condition as the same were in at the time of the abatement thereof; and that *plaintiff* may have the benefit thereof, or that the said defendant T. R. may show cause why the said suit and proceedings should not be so revived, and that the same may be revived accordingly. May it please, &c.

*Pray subpoena to revive  
against T. R.*

Defendants answered.

Death of the plaintiff.

Administration taken out by her heir at law.

Bill of revivor exhibited.

All the defendants having answered, the cause was heard and a decree pronounced.

Death of one of the defendants;

His will, The same proved by the executors.

Death of one of them, who is become entitled to the principal and interest secured upon mortgage of the share of G. H.

Title of the plaintiff to revive.

Prayer.

\*CLV. *Bill of revivor (after a decree and proceedings had before the Master) against the heir at law of the mortgagor the original defendant deceased. A bill of revivor having been formerly exhibited against the original defendant by the plaintiffs as the executors of the plaintiff in the original bill, the mortgagee deceased.*

[ \*424 ]

To, &c.

Humbly complaining show unto your lordship your orators and oratrix A. B. of — C. D. of — and E. F. of — widow, That

Original bill exhibited by J.

F. against T. in or about — J. F. late of — (since deceased) filed his original  
H. who ap- bill in this honorable court against T. H. (since deceased) as defen-  
peared and put dant thereto, thereby stating such several matters and things as in  
in his answer. the said original bill of complaint are for that purpose more particu-  
larly mentioned and set forth, and praying, &c. And your orators  
and oratrix further show that the said T. H. being duly served with  
process appeared to the said original bill and put in his answer there-  
to; and the said cause being at issue the same came on to be heard  
before his honor the Master of the Rolls in the absence of your lord-  
ship, when the court was pleased to order and decree, &c. And your  
orators and oratrix further show unto your lordship that before any  
further proceedings were had in the said suit and on or about —  
the said J. F. departed this life having first duly made and pub-  
lished his last will and testament in writing bearing date —, and  
thereby appointed your oratrix and also L. M. and N. O. executrix  
and executors of his said will, and having afterwards made and  
published a codicil to his said will bearing date —, whereby he  
revoked the appointment of the said L. M. and N. O. to be his  
executors, and appointed your orators to be his executors jointly  
with your oratrix in the place and stead of the said L. M. and N. O.;  
And your orators and oratrix afterwards duly proved the said will  
and codicil in the Prerogative Court of the Archbishop of Canter-  
bury, and thereby became and now are the legal personal repre-  
sentatives of the said J. F. deceased. And your orators and oratrix  
further show unto your lordship that the said suit having become  
abated by the death of the said J. F., your orators and oratrix on  
or about — filed their bill of revivor in this honorable court  
against the said T. H. thereby stating to the effect aforesaid, and  
praying, &c. And your orators and oratrix further show that the  
said suit and proceedings were accordingly duly revived by an order  
of this honorable court bearing date —. As in and by, &c. And  
your orators and oratrix further show unto your lordship that some  
proceedings have been had before the said Master to whom this cause  
stands referred, but no report hath yet been made thereon; and that  
on or about — the said late defendant T. H. departed this life  
leaving E. H. of — (the defendant hereinafter named) his heir  
at law, and without having devised or in any manner disposed of  
the equity of redemption of and in the said mortgaged premises.  
And your orators and oratrix further show unto your lordship that  
\*the said suit having become abated by the death of the said late  
defendant, your orators and oratrix are, as they are advised, as such  
executors and executrix as aforesaid, entitled to have the said suit  
and proceedings revived against the said E. H. as the heir at law of  
the said T. H., and to have the said decree and other proceedings  
had thereon prosecuted and carried into full effect against the said  
E. H. in like manner as they could or might have had if the said  
late defendant had been still living. To the end therefore that the  
said E. H. may show cause if he can why the said suit and proceed-  
ings therein should not stand and be revived against him as such  
heir at law of the said late defendant as aforesaid, and be in the  
same plight and condition as the same were in at the time of the

Decree made  
by the Master  
of the Rolls in  
the absence of  
the Lord  
Chancellor.

Death of the  
plaintiff.

His will.

A codicil  
afterwards  
made revok-  
ing the ap-  
pointment of  
two executors,  
and appoint-  
ing others.

The will and  
codicil proved  
by the plain-  
tiffs;

Bill of revivor  
filed by them  
against the  
original defen-  
dant.

The proceed-  
ings duly re-  
vived.

Proceedings  
had before the  
Master but no  
report made.

Death of the  
defendant T.  
H. intestate,  
leaving E. H.  
his heir at law.

[ \*425 ]

Title of the  
plaintiffs to  
revive.

Prayer.

abatement thereof; and that the said suit and proceedings had therein may stand and be revived accordingly. May it please, &c.

*Pray subpoena to revive against E. H. ;*  
*see note (12), p. 416.*

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SECT. III.

BILLS OF REVIVOR AND SUPPLEMENT.

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If a suit becomes abated, and by any act besides the event by which the abatement happens the rights of the parties are affected, as by a settlement,<sup>(1)</sup> or a devise<sup>(2)</sup> under certain circumstances, though a bill of revivor merely may continue the suit so as to enable the parties to prosecute it, yet to bring before the court the whole matter necessary for its consideration, the parties must by supplemental bill added to and made part of the bill of revivor, show the settlement, or devise, or other act by which their rights are affected. And in the same manner, if any other event which occasions an abatement is accompanied or followed by any matter necessary to be stated to the court, either to show the rights of the parties, or to obtain the full benefit of the suit, beyond what is merely necessary to show by or against whom the cause is to be revived, that matter must be set forth by way of supplemental bill added to the bill of revivor.<sup>(3)</sup>

A bill of revivor and supplement is a compound of those two species of bills, and in its separate parts must be framed and proceeded upon in the same manner.<sup>(4)</sup>

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**\*\*CLVI.** *Bill of revivor and supplement against the administrator of the defendant to the original bill which was filed for discovery in aid of a defence to an action, and for a commission to examine witnesses abroad; the defendant having died abroad without having put in his answer. An injunction had issued to restrain proceedings at law.* [ \*426]

*(The interrogatories are inserted.)*

In the Exchequer.

To, &c.

Humbly complaining sheweth unto your honors your orator T. S.

(1) See *Merrewether v. Mellish*, 13 Ves. 161, 2.

(2) See *Rylands v. Latouche*, 2 Bligh. P. C. 566.

(3) Ld. Red. Tr. Pl. p. 70, 4th edit.

(4) Ld. Red. Tr. Pl. p. 80.

Original bill exhibited by the same plaintiff.

Stating that plaintiff was commandant of a frigate;

His voyage homewards;

His arrival at P.;

The clearance of the cargo; The application by the agent of the defendant for the payment of 40,000 dollars alleged to have formed part of the cargo;

The production by him of a paper purporting to be a bill of lading thereof; and to which plaintiff's name appeared to be signed;

The fact that no such shipment had been made nor bill

[ \*427 ]

of lading signed by the plaintiff; the refusal by him to deliver or pay the 40,000 dollars; And that the defendant had commenced an action for the recovery of the value thereof;

Prayed that he might be restrained from all further proceedings at law,

of —, debtor, &c. [see form No. 2, p. 2.] That in or as of Michaelmas Term — your orator filed his original bill of complaint in this honorable court against J. B. S. as defendant thereto,<sup>(5)</sup> and that thereby after stating as therein mentioned, that in and before the month of October — your orator was commandant of his Majesty's ship or frigate called the H. which was then stationed or cruising off C. &c. and that on or about the 12th day of December — your orator departed on board the said ship from the said port of C. on his return voyage to E., and that on or about the 17th day of March — your orator arrived at the port of P.; and that in or about the month of August — being about seventeen months after the whole of the cargo of the said ship had been cleared, one J. R. A. acting on the behalf of the said J. B. S. required your orator to pay the sum of 40,000 milled hard dollars which he alleged had been part of the cargo of the said ship the H., and that the said J. R. A. produced to your orator a certain paper-writing purporting to be a bill of lading of 40,000 milled hard dollars shipped on board the said ship at C. aforesaid on the 20th day of November — to be delivered to J. J. G., or in his absence to the said J. R. A.; and that at the foot of such paper-writing your orator's name appeared to be signed in a hand nearly resembling that of your orator; and that your orator well knowing as the fact is, that he had not taken on board the said ship the H. the said 40,000 milled hard dollars which were as aforesaid claimed by the said J. R. A. on the behalf of the said J. B. S., and had never signed any bill of lading thereof, refused to deliver or pay the said 40,000 milled hard dollars or the value thereof to the said J. B. S. or any other person on his behalf; and that the said J. B. S. in or as of Michaelmas Term — commenced an action at law against your orator in his Majesty's Court of King's Bench for the recovery of the value of the said 40,000 milled hard dollars; and after by the said original bill further stating and charging as therein mentioned, it was prayed that the said defendant might be \*restrained by the order or injunction of this honorable court from any further proceedings in the said action at law already commenced by him, and from commencing or prosecuting any other action or proceeding at law in relation to the matters aforesaid or any of them; And that your orator might be at liberty to sue out one or more commission or commissions to examine your orator's witnesses abroad touching or concerning the matters aforesaid or any of them. And your orator further sheweth unto your honors that process of subpoena was duly served on the agent of the said J. B. S.; and that by an order of this court bearing date on or about the 11th day of December — and made upon an affidavit of the merits set forth in the said bill, it was ordered that an injunction should issue to restrain the said defendant his counsellors attorneys solicitors and agents from commencing or prosecuting any suit bill or plaint, or entering up any judgment, or suing out or levying any execution in any of the courts of common law against your orator, touching or in any wise concerning any of the matters or things contained in the said bill until

(6) Vide antea, p. 381. Form \*CXXXVIII.



the said defendant should have answered the said bill, and it should be otherwise ordered by this honorable court. And your orator further sheweth unto your honors that such injunction as aforesaid was duly issued in pursuance of the said order, and the same was duly served on the solicitors or agents of the said defendant J. B. S.; and that soon afterwards the said defendant sued out a commission to take his answer to the said bill at L.; and your orator joined the said defendant in naming the commissioners in such commission, and the same was duly sent out to L. aforesaid; but that before the said defendant put in his answer to the said bill, or any further proceedings than as aforesaid were had in the said cause, the said J. B. S. departed this life whereby the said suit and proceedings became abated; and that he left his son A. J. S. (the defendant hereto) him surviving, and that the said A. J. S. hath procured letters of administration of the personal estate and effects of the said J. B. S. in England to be granted to him by and out of the proper Ecclesiastical Court, and he hath thereby become and he now is his legal personal representative. And your orator further sheweth unto your honors by way of supplement that notwithstanding the matters in the said original bill mentioned, the said A. J. S. as such legal personal representative as aforesaid hath called on your orator to pay the said 40,000 milled hard dollars so alleged to have been shipped on board the said ship the H. as in the said original bill mentioned or the value thereof, and that your orator having refused to pay the same for the reasons in the said original bill set forth, the said A. J. S. as the legal personal representative of the said J. B. S. hath commenced and is now prosecuting an action at law against your orator for the recovery of the value of the said dollars. And your orator further sheweth by way of supplement, that the said J. B. S. by himself or his agents corresponded with divers persons in England or elsewhere respecting the said alleged bill of lading and shipment; and that in the course of such correspondence and also in the course of various communications \*with his son the said A. J. S., the said J. B. S. acknowledged and admitted, as the fact is, that he the said J. B. S. was defrauded and imposed upon by one J. A. or some other person in respect of the said alleged bill of lading and shipment; and that your orator never signed the said alleged bill of lading, or received on board the said ship the said 40,000 milled hard dollars to which the said J. B. S. was entitled, or in which he was interested. And your orator further sheweth by way of supplement, that the said A. J. S. has now or lately had in his possession custody or power divers letters copies of letters papers and writings relating to the matters in the said original bill and hereinbefore mentioned or some of them, and whereby if the same were produced the truth of the matters in the said original bill mentioned or some of them would appear; and that the said defendant ought to produce the same, but he refuses so to do. And your orator further sheweth that if the said A. J. S. shall be permitted to proceed to trial of the said action, he intends notwithstanding the matters in the said original bill and hereinbefore mentioned, to produce the said paper-writing purporting to be a bill of lading of the said 40,000 milled hard

and for a commission to examine witnesses abroad.

Process of subpoena issued and served on the agent of the defendant.

An injunction granted upon affidavit of the merits.

The injunction issued and served upon the defendant's solicitors or agents.

A commission sued out by the defendant to take his answer.

The plaintiff joined therein, and the same was duly sent abroad.

Death of the defendant before putting in his answer.

Letters of administration granted to his son the defendant.

[ \*428 ]

Supplemental matter,—

That the administrator has applied for payment of the 40,000 dollars or the value thereof.

That plaintiff having refused to pay, the defendant has commenced an action.

That the deceased corresponded with divers persons, and acknowledged or admitted

that he had been imposed upon by J. A., and that plaintiff had never signed the alleged bill of lading. That the defendant has divers letters, &c., which he refuses to produce.

That he intends to produce the alleged bill of lading on the trial.

That the plaintiff cannot proceed to trial without a discovery of the matters alleged in the original bill.

Title to revive. That the defendant ought to answer the original bill, and the matters before set forth, and ought to be restrained from proceeding at law.

Interrogatories.

[ \*429 ]

dollars on board the said ship. And your orator further sheweth that for the reasons and under the circumstances in the said original bill stated, and without a discovery of the several matters and things whereof a discovery is thereby prayed against the said J. B. S., your orator cannot with safety proceed to a trial of the said action now prosecuting by the said A. J. S. And your orator is advised that he is entitled to have the suit and proceedings which became abated as aforesaid revived against the said A. J. S., and to have the same restored to the same condition as the same were in at the time of the abatement thereof, and that the said A. J. S. ought to answer the said original bill, and to set forth and discover the several matters and things whereof a discovery is thereby prayed against the said J. B. S.; and that he ought to be restrained from commencing or prosecuting any action or proceedings at law in relation to the matters in the said original bill and hereinbefore mentioned. To THE END therefore that the said A. J. S. may upon his oath according to the best and utmost of his knowledge remembrance information and belief full true direct and perfect answer make to all and every the matters and things contained in the said original bill, and also to all and every the matters and things hereinbefore set forth by way of supplement; and that as fully and particularly as if the same were here again repeated, and he distinctly interrogated thereto; And particularly that he may answer and set forth whether such several proceedings as aforesaid or some and what other proceedings were not had in the said cause or how otherwise; And whether before the said defendant J. B. S. put in his answer to the said bill, or any further proceedings than as aforesaid were had in the said cause, and when in particular the said J. B. S. did not depart this life or how otherwise; And whether thereby or otherwise and how the said suit and proceedings did not become abated or how otherwise; And whether he did not leave his son the said defendant A. J. S. him surviving or how otherwise; And whether the said A. J. S. hath not and how long since procured letters of administration of the personal estate \*and effects of the said J. B. S. in England to be granted to him by and out of the proper or some and what Ecclesiastical Court or how otherwise; And whether he hath not thereby or otherwise and how become, and whether he is not now his legal personal representative or how otherwise; And whether notwithstanding the matters in the said original bill mentioned the said defendant as such legal personal representative as aforesaid or how otherwise and how hath not called on your orator to pay the said 40,000 milled hard dollars so alleged to have been shipped on board the said ship the H. as in the said original bill mentioned or the value thereof or some and what part thereof or how otherwise; And whether your orator did not refuse to pay the same for the reasons in the said original bill set forth or for some and what other reasons or reason or how otherwise; And whether the said defendant as the legal personal representative of the said J. B. S. or otherwise and how hath not commenced and whether he is not now prosecuting an action at law against your orator for the recovery of the value of the said dollars or for some and

what other purpose or how otherwise ; And whether the said J. B. S. by himself or his agents or otherwise and how did not and when correspond with divers or some and what persons or person in E. or elsewhere and where in particular respecting the said alleged bill of lading and shipment or how otherwise ; And whether in the course of such correspondence and also in the course of various or some and what communications or communication with his son the said defendant A. J. S. or otherwise and how the said J. B. S. did not and when and to whom by name and on what occasions or occasion acknowledge and admit and whether the fact is not that he the said J. B. S. was defrauded and imposed upon by the said D. J. A. or some other person or persons and whom in particular by name in respect of the said alleged bill of lading and shipment, and that your orator never signed the said alleged bill of lading, or received on board the said ship the said 40,000 milled hard dollars to which the said J. B. S. was entitled or in which he was interested, or to some such or the like or some and what other effect or how otherwise ; And whether the said defendant A. J. S. has not now or had not lately and when last in his possession custody or power divers or some and what letters copies of letters papers and writings or some and what letter copy of letter paper or writing relating to the matters in the said original bill mentioned or some or one and which of them or how otherwise, and what in particular have or has become thereof ; And whether thereby or by some or one and which of them if the same were produced or otherwise and how the truth of the matters in the said original bill mentioned or some or one and which of them would not appear or how otherwise, and if not why not ; And that the said defendant A. J. S. may set forth a full true and perfect list or schedule of all and every the letters papers and writings relating to the matters in the said original bill mentioned or any or either of them which are or is now or ever were or was in his possession custody or power ; And that he may produce and leave such of them as are or is now in his possession custody or power in the hands of his clerk in court, and may set forth what has become of such of them as are or is not now in his possession custody \*or power ; And that the said defendant may answer and set forth whether if he shall be permitted to proceed to trial of the said action he does not intend notwithstanding the matters in the said original bill and hereinbefore mentioned to produce the said paper writing purporting to be a bill of lading of the said 40,000 milled hard dollars as evidence that your orator received and took the said 40,000 milled hard dollars on board the said ship or how otherwise ; And whether for the reasons and under the circumstances in the said original bill stated and without a discovery of the several matters and things whereof a discovery is thereby prayed against the said J. B. S. your orator can with safety proceed to a trial of the said action now prosecuting by the said defendant A. J. S. or how otherwise ; And whether your orator is not entitled to have the said suit and proceedings which became abated as aforesaid, revived against the said A. J. S. and to have the same restored to the same condition as the same were in at the time of the abatement thereof, or how otherwise, and if not why not ; And

[ \*430 ]

whether the said defendant A. J. S. ought not to answer the said original bill and to set forth and discover the several matters and things whereof a discovery is thereby prayed against the said J. B. S. or how otherwise, and if not why not; And whether he ought not to be restrained from commencing or prosecuting any action or proceedings at law in relation to the matters in the said original bill and hereinbefore contained, or how otherwise, and if not why not.

And that the said suit and proceedings which became abated by the death of the said J. B. S. may be revived against the said A. J. S. and be in the same plight and condition as the same were in at the time of the abatement thereof, or that he may show good cause to the contrary. And that the said defendant may answer the said original bill, and may make a full and true discovery of all and every the matters herein and thereinbefore stated and inquired after, and that he may be restrained by the order or injunction of this honorable court from any further proceedings in the said action at law already commenced by him, and from commencing or prosecuting any other action or proceeding at law in relation to the matters in the said original bill and hereinbefore mentioned or any of them. May it please your honors, &c. [See note (12), p. 416, and form No. 4, p. 6.]

*Pray subpoena and injunction against  
A. J. S. omitting the words "to stand  
and abide by such order and decree."*

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- [ \*431 ] \*\*CLVII. *Bill of revivor and supplement by the executors of the deceased plaintiff in the original bill against the administratrix and heiress at law of the deceased defendant against whom the original bill had been exhibited for a foreclosure of a mortgage of freehold and leasehold property.*

In Chancery.

To, &c.

Original bill  
exhibited  
against T. W.  
for a foreclo-  
sure.

Humbly complaining show unto your lordship your orators R. W. of, &c. and N. W. of, &c. executors named and appointed in and by the last will and testament of H. W. late of, &c. gent. deceased, That on or about the — day of July — the said H. W. exhibited his bill of complaint in this honorable court against T. W. late of, &c. gent. deceased, thereby praying that the said T. W. might be decreed by this honorable court to come to a just and fair account with the said H. W. for the principal and interest then due and owing to him on the mortgage security in the said bill mentioned, and might pay the same to the said H. W. by a short day to be appointed by this honorable court, together with his costs; and in default thereof that the said T. W. might stand absolutely barred and foreclosed of and from all manner of benefit and advantage of redemption or claim

in or to the residue of two several terms of five hundred years and four hundred years in the respective mortgaged premises in the said bill mentioned and every part thereof. And the said defendant T. W. having been duly served with process appeared thereto, and departed this life on or about the 23d day of January — without having put in his answer to the said bill. And your orators show unto your lordship by way of supplement to the said original bill, that the said defendant T. W. departed this life intestate leaving his wife E. W. a defendant hereinafter named *enciante* with a child since born and named A. W. and the said A. W. is now the sole heiress at law of the said T. W. deceased, and as such entitled to the reversion and remainder of the freehold part of the said mortgaged hereditaments and premises expectant upon the determination of the said term of five hundred years therein. And your orators further show unto your lordship that on or about the 12th day of August — letters of administration of the goods, chattels and effects of the said T. W. deceased, were duly granted by the Prerogative Court of the Archbishop of Canterbury unto his widow the said E. W. who is thereby become his sole personal representative. And your orators further show unto your lordship that the said complainant H. W. departed this life on or about the first day of February —, having previously duly made and published his last will and testament in writing bearing date on or about the 13th day of May —, and thereof appointed your orators joint executors; and on or about the 5th day of July — your orators duly proved the said will in the said Prerogative Court of the Archbishop of Canterbury, \*and took upon themselves the burthen of the execution thereof. And your orators further show that upon the death of the said H. W. the said two several terms of five hundred years and four hundred years became and the same are now vested absolutely at law in your orators as his legal personal representatives, subject nevertheless to redemption on payment of the principal money and interest thereby secured. And your orators further show unto your lordship that the said suit having become abated by the death of the said T. W. your orators are advised that they as the personal representatives of the said H. W. deceased are entitled to have the same revived and restored as against the said E. W. and A. W. to the same plight and condition in which it was in at the time of the death of the said T. W., and to have the same relief against the said E. W. and A. W. To THE END therefore that the said E. W. and A. W. may upon their respective corporal oaths, &c. [*Ut antea, vide p. 428, and interrogate to the statements.*]

And that the said E. W. and A. W. may answer the said original bill, and that they may be decreed by this honorable court to come to a just and fair account with your orators for the principal and interest now due and owing to your orators on the said mortgage securities, and may pay the same to your orators by a short day to be appointed by this honorable court, together with your orators' costs, and in default thereof, that the said defendants may stand and may be absolutely barred and foreclosed of and from all manner of benefit or advantage of redemption or claim in or to the said residue of

The defendant appeared, and died without having put in his answer.

Supplemental matter—

Death of the defendant leaving a widow *enciante* the child since born and become entitled as heiress at law to the freehold part of the mortgaged premises.

Letters of administration granted to the widow.

Death of H. W. the plaintiff in the original bill, having ap-

[ \*432 ] pointed plaintiffs his executors, who have since proved the will;

And that upon his death the mortgage terms became vested in the plaintiffs, subject to redemption.

Title to revive.

Prayer.

the said five hundred years and four hundred years terms in the said respective mortgaged premises and every part thereof; and that the said suit may stand and be revived against the said defendants, and be in the same plight and condition in which the same was at the time of the decease of the said defendant T. W., or that the said E. W. and A. W. respectively may show good cause to the contrary. May it please, &c. [*See note (12), p. 416.*]

*Pray subpoena to revive and answer the original bill and supplemental bill against E. W. and A. W.*

[\*433] \*\*CLVIII. *Bill of revivor and supplement against the executors of the defendant to the original bill, who had died after publication passed but before the hearing of the cause.*

[*The interrogatories are inserted.*]

In Chancery.

To, &c.

Original bill exhibited against M. W. praying that she might be compelled to obtain the renewal of a lease, and to pay the necessary fine.

The defendant appeared and put in her answer.

Witnesses examined, publication passed, and the cause set down for hearing.

Death of the defendant.

Supplemental matter.

M. W. by her will appointed J. U. and W. D. executors, who have since proved

Humbly complaining sheweth unto your lordship your orator W. C. of, &c. That your orator in or as of Michaelmas Term —, exhibited his bill of complaint in this honorable court against M. W. late of, &c. spinster (since deceased,) thereby praying that the said M. W. might be decreed by this honorable court to apply for and procure a renewal of the lease from the dean and chapter of W. in the said bill mentioned, so as to make the term unexpired upon the same as beneficial and for the same number of years as if she had renewed the said lease at the accustomed period next after the decease of the testator in the said bill named, and duly from time to time subsequently renewed the same and to pay the necessary fine or fines to the said dean and chapter for that purpose; and the said defendant M. W. having been duly served with process appeared and put in her answer to the said bill; and your orator having replied thereto and examined witnesses on his behalf, publication hath since passed, and the said cause was set down to be heard before your lordship, As in and by the said bill and other proceedings now as of record in this honorable court will appear. And your orator further sheweth that before the said cause came on for hearing, the said defendant M. W. departed this life, whereby the said suit and proceedings became abated. And your orator further sheweth unto your lordship by way of supplement, that the said M. W. duly made and published her last will and testament in writing, bearing date the 24th day of March —, and thereby appointed J. U. of —, and W. D. of —, joint executors thereof, who shortly after the decease of the said testatrix duly proved the same together with a codicil thereto, in the Prerogative Court of the Archbishop of Canterbury, and took upon themselves the burthen and the execution thereof;

and the said J. U. and W. D. have by virtue thereof possessed themselves of all the personal estate goods chattels and effects of the said testatrix to a large amount in value, and much more than sufficient to answer and satisfy the claims of your orator thereon for or in respect of the fines due and payable by or from the said testatrix in her life-time to the said dean and chapter of W. for a renewal of the lease in the said bill mentioned, and also the said testatrix's debts funeral expenses and legacies, with a large surplus. And your orator further sheweth unto your lordship that the said suit having become abated by the death of the said M. W., your orator is advised that he is entitled to have the same revived and restored as against the said J. U. and W. D. to the same plight and condition to which it was in at the time of the death of the said M. W., and to have the same relief against the said J. U. and W. D. as such executors as aforesaid, as he was entitled to against the said testatrix. To THE END therefore that the said suit and proceedings so abated as aforesaid may stand and be revived against the said J. U. and W. D. and be in the same plight and condition in which the same were at the time of the decease of the said testatrix, and that the said J. U. and W. D. may answer the several matters hereinbefore set forth by way of supplement, and more especially that they may upon their respective corporal oaths to the best and utmost of their respective knowledge remembrance information and belief answer and set forth, Whether the said testatrix did not duly make and publish her last will and testament in writing of such date and to such purport and effect as hereinbefore in that behalf mentioned and set forth, or of some and what date purport or effect; And whether the said J. U. and W. D. or one and which of them did not shortly and when in particular after the decease of the said testatrix, duly prove the same with a codicil thereto in the Prerogative Court of the Archbishop of Canterbury, and take upon themselves or himself the burthen and the execution thereof; And whether they or one and which of them have or hath not by virtue thereof possessed themselves or himself of all or some and what part or parts of the personal estate goods chattels and effects of the said testatrix to a large and what amount in value, and much more, and how much more than sufficient to answer and satisfy the aforesaid claims of your orator thereon, and also the said testatrix's debts funeral expenses and legacies, with a large and what surplus; and that the said J. U. and W. D. may admit assets of the said testatrix come to their hands sufficient to answer and satisfy the amount of the fine or fines due and payable from the said testatrix in her life-time to the said dean and chapter of W. for a renewal of the lease in the said bill mentioned, or that they may set forth and discover a full true and particular account of all and singular the personal estate goods chattels and effects of the said testatrix possessed by or come to the hands of them the said defendants or either of them, or of any person or persons and whom by name by the order with the privy or for the use of them or either and which of them, together with the natures kinds quantities qualities full true and utmost value thereof and of every part thereof, and how and in what manner the same personal estate and effects and

the same, and possessed themselves of the personal estate sufficient to answer the plaintiff's demands, and also the deceased's debt, &c.

Title to revive.

[ \*434 ]

Interrogatories to the supplemental matter.

That the defendants may admit assets, or set forth the accounts of the personal estate, &c., and their application thereof.

every part thereof have or hath been applied or disposed of, and what part or parts thereof now remain unapplied and undisposed of, or outstanding unpossessed and unreceived.

Prayer.

[ \*435 ]

And that the said suit and proceedings so abated as aforesaid may stand and be revived against the said defendants J. U. and W. D., and be in the same plight state and condition in which the same were at the time of the decease of the said defendant M. W., or that they respectively may show good cause to the contrary. And that the said J. U. and W. D. may admit assets of the said testatrix come to their hands sufficient to answer and satisfy the amount of the fine or fines due and payable from the said testatrix in her life-time to the said dean and chapter of W. for a renewal of the lease in the \*said bill mentioned, or that an account might be taken by and under the direction and decree of this honorable court of the personal estate and effects of the said testatrix, and of her debts funeral and testamentary expenses and legacies, and that all usual and proper directions may be given for that purpose. May it please, &c. [See note (12), p. 416.]

*Pray subpoena to revive and answer  
the supplemental bill against J.  
U. and W. D.*

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\*CLIX. *Bill of revivor and supplement (after a decree) by one of the defendants to the original bill, and the widow and heir at law of the other defendant, since deceased, against the executrix of one of the plaintiffs in the original bill, since deceased, and the assignees of the other plaintiff, who had become bankrupt, and also against the bankrupt, (the plaintiffs in the original bill being executors and trustees under a will had been examined upon interrogatories;) —praying to have the accounts directed by the decree carried on, an account taken of the testator's personal estate and of the rents of his real estate possessed by the deceased executor since his examination, or by the executrix of such executor since his death, and that she may admit assets sufficient to answer the same, or that the usual accounts may be taken of his personal estate; also to have an account taken of the testator's personal estate and of the rents of his real estate possessed by the bankrupt since his examination, and that the amount may be proved under the commission issued against him, and that his assignees may also account for so much thereof as they may have received.*

In Chancery.

To, &c.

Original bill  
exhibited by  
J. W. and A.

Humbly complaining show unto your lordship your oratrixes and orators E. C. of —, M. P. of —, widow, and J. P. of —, That J. W. late of —, deceased, and A. G. of —, trustees and



executors of the last will and testament of S. P. late of —, deceased, exhibited their original bill of complaint in this honorable court in or as of Easter Term —, against J. P. late of —, gent. since deceased, second cousin and heir at law of the said testator S. P., and your orator E. C., &c. [*stating the proceedings and the decree made in the cause.*] As in and by the said bill and other proceedings now as of record in this honorable court will appear.

That in pursuance of the said order the said Master proceeded in taking the accounts therein directed, and the said J. W. and A. G. were examined upon interrogatories before him.

That the said Master in pursuance of the said decree caused an advertisement to be inserted in the London Gazette for the next of kin of the said testator to come in before him and prove their relationship, when your oratrix E. C. as one of the next kin, and \*the said J. P. deceased as one other of the next of kin and the heir at law of the said testator, put in their claim before the said Master, and several other claimants also appeared, but before the said Master made his report upon the several matters to him referred, as hereinbefore mentioned, and on or about the — day of May — the said J. P. departed this life, whereby the said suit and proceedings as to him became abated.

That the said J. P. died intestate, leaving your oratrix M. P. his widow, your orator J. P. his only son and heir at law, and M. P. and M. J. P. his only other children, his next of kin surviving him; and your oratrix M. P. his widow hath obtained letters of administration of the estate and effects of the said J. P. deceased, to be granted to her by the Prerogative Court of the Archbishop of Canterbury, and is thereby become the legal personal representative of the said J. P. deceased.

That on or about the — day of February — the said J. W. departed this life, having first duly made and published his last will and testament in writing bearing date the 15th of November —, and thereby appointed A. M. of —, sole executrix thereof, who hath since duly proved the same in the Prerogative Court of the Archbishop of Canterbury, and taken upon herself the execution thereof, and by virtue thereof possessed herself of personal estate and effects of the said J. W. more than sufficient to answer and satisfy the personal estate and effects and rents and profits of the real estate of the said testator S. P. possessed by the said J. W. in his life-time; and the said A. M. hath also possessed herself of considerable other personal estate and effects of the said testator S. P. unpossessed by the said J. W. in his life-time, and applied the same to her own use.

That on or about the 3d November — a commission of bankrupt under the great seal of Great Britain, was duly awarded and issued against the said A. G. under which he was duly found and declared to be a bankrupt by the major part of the commissioners in the said commission named, and J. I. of —, T. E. of —, and E. R. C. of —, were duly chosen assignees of the estate and effects of the said bankrupt, and the usual assignment thereof was made and exe-

G. as executors of S. P. against J. P. and E. C.

That the Master proceeded in taking the accounts directed by the decree, and J. W. and A. G. were examined upon interrogatories.

An advertisement published for the next of kin of the testator to come in.

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E. C., and J. P. since deceased, put in their claim; and several other claimants also appeared but before the Master's report J. P. died intestate; leaving plaintiffs M. P. his widow J. P. his heir at law, and two other children, his only next of kin.

Letters of administration granted to his widow M. P. Death of the plaintiff J. W.; His will; and probate thereof by A. M. the executrix who has possessed assets of his sufficient to answer the assets of the testator S. P., possessed by him, and has also possessed part of the assets of the testator S. P.

Letters of administration granted to his widow M. P.

Death of the plaintiff J. W.;

His will; and probate thereof by A. M.

the executrix who has possessed assets of his sufficient to answer the assets of the testator S. P.,

possessed by him, and has also possessed part of the assets of the testator S. P.

A commission of bankrupt issued against the other plaintiff A. G.; J. I.; T. E. and E. R. C. chosen assignees, and the usual assignment executed to them;

That they have possessed assets of the testator S. P. remaining in specie in the hands of the bankrupt; and

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have also possessed other parts of the assets of the said S. P.

That the Master proceeded in examining the claims carried in before him, and allowed those of the plaintiff E. C. and of J. P. deceased, as the testator's sole next of kin.

Plaintiffs entitled to revive as the other parties entitled to revive have neglected to do so; and to have the accounts carried on against A. M. and A. G. and his assignees. That A. M. ought to admit assets, or to account for the estate of her testator J. W.

That A. M. and A. G. may set forth an account of the personal es-

cuted to them by the major part of the commissioners in the said commission named.

That the said J. I. T. E. and R. E. C. have possessed themselves of a considerable part of the personal estate of the said testator S. P. possessed by the said bankrupt A. G. and remaining in his hands at the time of his bankruptcy, and which they well knew the said A. G. was only possessed of as trustee and executor of the said S. P. and that a suit was instituted in this honorable court respecting the same, and they have also since the said bankruptcy possessed themselves of other part of the estate and effects of the said S. P.

That in pursuance of the aforesaid order the said Master hath proceeded in examining the several claims of the persons representing themselves to be next of kin to the said testator S. P. carried in before him, and hath finally approved and allowed the claim of your oratrix E. C. and the said J. P. deceased as the sole next kin to the said S. P.

\*That the said suit and proceedings having become abated by the deaths of the said J. W. and J. P. and the said A. G. having become bankrupt as aforesaid, and the said A. M. as executrix of the said J. W. and the said J. I. T. E. and E. R. C. as assignees of the said A. G. neglecting to revive the said suit and proceedings, your oratrixes and orator are, as they are advised, entitled to have the same revived and restored to the same plight and condition in which they were before they became abated by the deaths of the said J. W. and J. P., and to have the said accounts directed by the aforesaid decree carried on against the said A. M. as executrix of the said J. W., and against the said A. G. and also against the said J. I. T. E. and E. R. C. as assignees of the said A. G., and also to have an account against the said assignees as to what they have received of the assets of the said testator; and the said A. M. ought to admit assets of the said J. W. come to her hands sufficient to answer the estate and effects of the said testator S. P. deceased, possessed by the said J. W. in his life-time, or by her since his decease, and the interest accumulated thereon, or else to set forth an account of the said J. W.'s estate and effects possessed by her, with the particulars and values thereof, and to discover what parts thereof remain in her hands unapplied and undisposed of by her, and what part of the said J. W.'s estate and effects remain outstanding and undisposed of by her. To THE END therefore, &c. &c.

And that the said A. M. and A. G. may respectively set forth a full true and particular account of the personal estate and effects of the said testator S. P. outstanding and unreceived at the time of the said examination, and what part or parts thereof was or were afterwards collected in and received by the said A. G., and by the said J. W. previously to his decease, and by the said A. M. since his decease, and of what the same consisted, and how the same and every part thereof hath been applied, and what is become thereof, and what part or parts thereof is or are now remaining outstanding and unreceived.

And that the said A. M. may either admit assets of the said J. W. come to her hands sufficient to answer the amount of the estate and

effects of the said testator S. P. possessed by the said J. W. in his life-time, or that she may set forth a full true and particular account of all the said testator J. W.'s personal estate possessed by or come to the hands of her or any person or persons by her order, or for her use, together with the particular natures quantities qualities and true and utmost value thereof, and of every part thereof; and may set forth and discover how she has applied and disposed of such personal estate and effects and every part thereof, or so much thereof as she has applied and disposed of, and what parts thereof, remain unapplied and undisposed of by her, and what part of the said J. W.'s personal estate remain outstanding and unpossessed by her. And that the said A. G. may also set forth a full true and particular account of all the personal estate and effects of the said testator S. P., and of the rents and profits of his real estate which have been received by him since the time of his swearing to his said examination, and how the same and every part thereof hath been applied and disposed of, and where and in whose custody possession \*or power the same and every part thereof now is. And that the said J. I., T. E. and E. R. C. as assignees of the said A. G. may set forth an account of the personal estate of the said testator which hath specifically come to their or either of their hands or possession, and how and in what manner they have paid and disposed thereof.

And that your oratrixes and orators may have the benefit of the said decree, and that the said accounts may be carried on, and that an account may be taken by and under the direction and decree of this honorable court of all the personal estate and effects of the said testator S. P. and the rents and profits of his real estate received by or come to the hands possession or power of the said J. W. subsequently to the time of swearing to his said examination; and also an account of the personal estate and effects of the said S. P. and the rents and profits of his real estate received by or come to the hands possession or power of the said A. M. since the decease of the said J. W. together with the particular nature quantities qualities and true and utmost value thereof; and that the said A. M. may answer what upon the taking of the said accounts shall be found due from the said J. W. out of his personal assets; and that she may admit assets come to her hands sufficient for that purpose, or that she may account for the personal estate of the said J. W. in the usual manner; and that an account may be taken of the assets of the said testator S. P., and of the rents and profits of his real estates specifically come to the hands and possession of the said A. G. subsequently to the time of swearing to his said examination, and that he may account for the same, and that your oratrixes and orator or some person to be appointed by this honorable court may prove as a debt under the commission of bankrupt against the said A. G. and receive dividends thereon to be applied as the estate of the said testator S. P. in a due course of administration what upon the taking of the said accounts he shall appear to have received and misapplied before his bankruptcy; and that the said J. I., T. E. and E. R. C. may be decreed to account for the personal estate of the said testator S. P. and the rents and profits of his real estate specifically come to their hands and

tate of the testator S. P. not got in at the time of the examination, and since received by A. G. or the deceased J. W. or by A. M. since his death, and the application thereof, and what remains outstanding. That A. M. may admit assets, or may set forth an account of her

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testator J. W.'s estate and the application thereof, and what remains outstanding.

That A. G. may set forth an account of the personal estate and rents of the real estate of S. P. received by him since his examination and the application thereof;

And that his assignees may in like manner account.

Prayer.

possession, and that they may be decreed to pay what they shall appear to have so received, and that the same may be distributed as part of the estate of the said testator S. P.; and that the said A. M., A. G., J. I., T. E. and E. R. C. may respectively show cause if they can why the said suit and proceedings should not stand revived as against them, and be in the same plight and condition in which they were at the time of the abatement thereof, and that the same may stand revived accordingly. [*And for general relief; see form VIII. p. 5, and note (12), p. 416.*]

*Pray subpoena to revive and  
answer against A. M. A. G.  
J. I. T. E. and E. R. C.*

[\*439] \*CLX. *Bill of revivor and supplement by all the original plaintiffs except one since deceased, against his heir at law and executor who was a defendant to the original bill and had become bankrupt, and also against the surviving assignee under the commission of bankrupt issued against him.*

Original bill exhibited. Humbly complaining show unto your lordship your oratrixes and orators S. P. of — E. U. of — R. A. of — and G. T. W. of — and A. his wife, That on or about the — day of — your oratrixes and orators together with J. A. the elder gentleman since deceased, exhibited their original bill of complaint in this honorable court against J. A. the younger of — S. A. of — and J. K. of — (three of the defendants hereinafter named) and —, thereby stating such matters and things as are therein for that purpose more particularly mentioned and set forth, and praying that, &c. And your oratrixes and orators further show that all the said defendants being duly served with process appeared to the said bill, but that only the said defendants J. A. the younger, S. A. and J. K. have put in their answers thereto. And your oratrixes and orators further show unto your lordship that by an order bearing date —, it was ordered, &c. [*That the said defendants — should pay into the bank the money admitted by their answer to be due.*] As in and by the said bill answers and proceedings now remaining as of record in this honorable court reference being thereunto had will appear.

All the defendants appeared, but three only have put in their answers. Order made for payment of money into court. Supplemental matter, — Commission of bankrupt issued against J. A. the younger. Assignment and bargain and sale executed to his assignees. And your oratrixes and orators further show unto your lordship by way of supplement, that on or about — a commission of bankrupt under the great seal of Great Britain was duly awarded and issued against the said defendant J. A. the younger, and that he was thereupon duly found and declared bankrupt, and the usual assignment of his personal estate and effects and a bargain and sale of his real estate were made and executed by the major part of the commissioners in the said commission named and authorized to the said complainant J. A. the elder and R. B. of — (another defendant hereto), and were duly chosen assignees by the creditors for that purpose. As in and by, &c. And your oratrixes and orators further

show unto your lordship that on or about the — day of — the said complainant J. A. departed this life, leaving the said defendant J. A. the younger his heir at law, and having first duly made and published his last will and testament in writing bearing date —, and thereby appointed M. C. and W. W. the executors thereof; and the said M. C. and W. W. having announced the probate of the said will, letters of administration with the said will annexed bearing date — have been granted by the proper Ecclesiastical Court to the said defendant J. A. the younger, who hath thereby become and now is the legal personal representative of the said complainant J. A. deceased. And your oratrixes and orators further show unto your lordship that the said defendant R. B., as the surviving assignee of the said defendant J. A. the younger under the commission of bankrupt awarded against him as aforesaid, claims to be entitled to all right and interest of the said defendant J. A. the younger under the will of the said \*testator K. A.; and that the said suit and proceedings having become abated by the death of the said complainant J. A. your oratrixes and orators are advised that they are entitled to have the same revived against the said defendant J. A. the younger as the personal representative of the said complainant J. A. deceased and to prosecute the same against the said R. B. as the surviving assignee of the said defendant J. A. the younger.

To the end therefore that the said suit and proceedings which so became abated as aforesaid may stand revived and be in the same plight and condition as the same were in at the time of such abatement, and that your orators may have the benefit of the said suit and proceedings against the said R. B. as the assignee of J. A. the younger. [*And for further relief.*]

J. L.

CLXI. *Bill of revivor and supplement (after a decree) against the executors of a deceased defendant, who was one of the executors and trustees under the original testator's will, and also a receiver appointed in the cause, praying to have the accounts directed by the decree prosecuted, receivers appointed as to real estate and outstanding personalty; that the clear residue of the original testator's estate may be ascertained and one moiety secured for the benefit of the plaintiff during his minority; also to have an account taken of the moneys invested by the deceased executor in trust for the plaintiff, and of the rents of the plaintiff's estates received by the deceased, and that the same may be paid out of his assets or that the usual accounts may be taken thereof.*

States that plaintiff in or about — Term — by S. H. esq. his next friend, exhibited his original bill of complaint in this honorable court against — therein stating the will of the said testator G. B. the elder so far as, &c. and thereby praying that, &c. [*Stating the prayer,—the proceedings in the cause, the appointment of G. B. the younger as receiver, and the decree made on the hearing.*]

Death of one of the plaintiffs who was also one of the assignees;

His will, and that the executors renounced probate thereof;

Administration with the will annexed granted to J. A. the younger his heir at law.

That the surviving assignee

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nee claims the interest of the bankrupt under the will of K. A.

Title of the plaintiff to revive.

Prayer.

Original bill exhibited by plaintiff an infant, by his next friend.

Supplemental matter,—  
Stating the testator's will more fully and a codicil thereto;

And further stating by way of supplement, that the said testator G. B. the elder in and by his last will and testament stated in *plaintiff's* said original bill, also amongst other things gave and bequeathed all other his leasehold messuages, &c. And by a codicil to his said will bearing date —, the said testator revoked the bequest of his leasehold house in, &c. which by his said will he had given, &c. and directed, &c.

and his death,

That the said testator G. B. the elder departed this life soon after making and publishing his said will and codicil thereto, without revoking or altering the same or either of them, save as the said will is altered by the said codicil, and that upon or soon after the said testator's decease the said G. B. the younger and S. H. duly proved the said will and codicil in the Prerogative Court of the Archbishop of Canterbury, and took upon themselves the execution thereof.

and probate of the will and codicil by the executors.

That the testator was possessed of large personal estate.

That the said testator G. B. the elder was at the time of his decease possessed of interested in and entitled unto a very large and \*considerable personal estate consisting of, &c. and other effects to a considerable amount or value in the whole; and that the said S. H. having left the whole management of the said testator's affairs to the said G. B. the younger his said co-executor, the said G. B. the younger under and by virtue of the said will and codicil and the probate thereof possessed got in and received all or the greatest part of the said testator's debts and moneys outstanding due and owing to him at the time of his decease, and sold and disposed of all his stock and effects, and received the moneys arising thereby, and thereout paid and discharged all and singular the said testator's funeral expenses debts and legacies; and he the said G. B. the younger also from time to time received the rents and profits of the said leasehold estates and premises, and the interest and dividends of the said testator's personal estate out at interest, and applied one moiety thereof to his own use, and the other moiety thereof he laid out in the funds at interest in the joint names of himself and the said R. B. for the benefit of *plaintiff*, and there now remains standing in the joint names of — on that account the sums of £—— 4 per cent. bank annuities and £—— New S. S. A.

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That the executor G. B. the younger managed and received all the property and paid the debts, &c.

One moiety of the rents, &c., laid out by him in trust for the plaintiff.

Large arrears due from him as receiver.

That at the time of the decease of the said G. B. the younger there was also a considerable sum of money coming due and owing from him in respect of what he had received on account of the rents and profits of the estates devised by the said will in trust for the benefit of *plaintiff*, as the receiver appointed thereof in manner aforesaid, as also on account of the rents and profits received before he was appointed receiver.

Death of G. B. the younger, leaving his co-executor surviving.

That the said G. B. the younger died leaving the said S. H. his co-executor surviving, who thereupon became and is the surviving legal personal representative of the said testator G. B. the elder; and he the said S. H. together with the said G. R. are the surviving trustees of the said testator's residuary personal estate upon the trusts aforesaid.

His will,

That the said G. B. the younger in his life-time duly made and published his last will and testament in writing bearing date —, and thereby appointed his wife Z. A. B., the said S. H. and G. R.

and T. D. executrix and executors of his said will, and that the said S. H., G. R. and T. D. have since the death of the said G. B. the younger duly proved his said will in the proper Ecclesiastical Court and taken upon themselves the execution thereof and thereby became and now are the legal personal representatives of the said testator G. B. the younger.

That the said testator G. B. the younger died possessed of interested in and entitled unto a very considerable personal estate, and that they his said executors or some or one of them or some person or persons by their or some or one of their order, or for their or some or one of their use, have or hath possessed got in and received the same to a very large amount, and more than sufficient to pay and discharge all his funeral expenses, &c. and particularly to answer and satisfy the demands of *plaintiff* thereon in respect of the matters aforesaid; and no account hath as yet been rendered or taken of the said testator G. B. the elder's residuary personal estate, a moiety whereof belongs to *plaintiff*, and a very considerable sum \*of money now remains due to *plaintiff* from the estate of the said G. B. the younger in respect thereof, and so much thereof as hath been possessed or received by the said G. B. the younger deceased ought to be ascertained and paid out of the assets of the said G. B. the younger possessed and received by his said executors as aforesaid, as also what is due from the said G. B. the younger deceased in respect of the rents and profits received by him as aforesaid.

That the residuary personal estate of the said G. B. the elder yet remaining unaccounted for, an account ought now to be taken thereof, and of the application and disposition thereof, and that the clear residue thereof ought to be ascertained, and one moiety thereof set apart and appropriated for the use and benefit of *plaintiff* under and by virtue of the said will of the said testator G. B. the elder; and that an account ought also to be taken of the rents and profits of the real estates belonging to *plaintiff* possessed or received by the said G. B. the younger in his lifetime as aforesaid.

That *plaintiff* is also as he is advised, entitled to have the suit and proceedings which so became abated as aforesaid revived, and to have the same benefit thereof against the said defendants the personal representatives of the said G. B. the younger as *plaintiff* could or might have had against the said G. B. the younger had he been living; and that *plaintiff* is entitled to prosecute the decree made in the said cause, and that some proper person ought to be appointed by this honorable court, to be a receiver of the rents and profits of the aforesaid devised real estates in the place and stead of the said G. B. the younger deceased, with the usual and necessary directions in that behalf. To THE END, &c.

And that the said suit and proceedings which so became abated as aforesaid, may stand and be revived against the said defendants S. H. &c. and be in the same plight and condition as the same were in at the time of the death of the said G. B. the younger, or that they may show good cause to the contrary and that *plaintiff* may have the same benefit thereof against the said defendants S. H. &c. as he could or might have had against the said G. B. the younger had he

and probate thereof by the executors;

That he died possessed of property amply sufficient to answer the plaintiff's demands;

No account yet taken of the first testator's estate, or of what is coming to plaintiff therefrom;

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That the clear residue ought to be ascertained, and one moiety invested for the benefit of plaintiff; and that an account ought to be taken of the rents of plaintiff's estates received by G. B. the younger.

Title to revive, and to prosecute the decree, and that a receiver ought to be appointed.

Prayer.

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been living. And that the said decree made on the hearing of the said cause may be directed to be prosecuted and carried into full effect, and that some proper person may be appointed receiver of the rents and profits of the aforesaid devised real estates with the necessary and usual directions in that behalf, in the place and stead of the said G. B. the younger deceased. And that an account may be decreed to be taken of the personal estate and effects of the said G. B. the elder deceased, possessed or received by the said several defendants S. H. &c. or any or either of them or by the said G. B. the younger deceased in his life-time or by any other person or persons by their or any or either of their order, or for their or any or either of their use and of the application and disposition thereof. And that a proper person may be appointed receiver of the rents and profits of the leasehold estates of the said G. B. the elder, and to collect and get in his outstanding personal estate, with the usual and necessary \*directions in that behalf. And that an account may be also taken of the funeral expenses debts and legacies of the said G. B. the elder, and that the same if any remain unpaid may be paid and discharged in a due course of administration, and that the clear residue or surplus of the personal estate of the said testator G. B. the elder may be ascertained, and that one full moiety thereof may be set apart and appropriated for the use and benefit of *plaintiff*, and may be ordered to be paid into court, and to be preserved and improved for his use and benefit during his minority. And that an account may be decreed to be taken of what was received and appropriated or set apart and laid out in the purchase of funds by the said G. B. the younger deceased, either on account of or from or in respect of *plaintiff's* part or share of and in the residuary personal estate of the said testator G. B. the elder, or on account of or from the rents and profits of *plaintiff's* said real estates; And that an account may be taken of the rents and profits of *plaintiff's* said estate possessed or received by the said G. B. the younger in his life-time, or by any person or persons by his order or for his use, and that the said stocks or funds so purchased with *plaintiff's* money may be ordered to be transferred into the name of the Accountant-General of this court in trust for *plaintiff*; And that the said defendants S. H., &c. as the personal representatives of the said testator G. B. the younger may be decreed to account for and pay to or for the use of *plaintiff* what shall appear to have been coming due to him from the estate of the said G. B. the younger at the time of his decease, and that they may either admit assets of the said testator G. B. the younger come to their hands sufficient to answer and satisfy such the aforesaid demands of *plaintiff* thereout, or that they may be decreed to account for the personal estate and effects of the said G. B. the younger deceased, and for the application and disposition thereof in the usual manner. And that all proper and necessary directions may be given for effecting the several matters aforesaid. [And for general relief.]



## \*CHAPTER V.

## BILLS IN THE NATURE OF ORIGINAL BILLS.

Bills for the purposes of cross litigation of matters already depending before the court, of controverting, suspending, avoiding, or carrying into execution a judgment of the court, or of obtaining the benefit of a suit which the plaintiff is not entitled to add to or continue for the purpose of supplying any defects in it, have been generally considered under the head of bills in the nature of original bills,(1) though occasioned by or seeking the benefit of former bills: and may be,

- I. A cross bill, exhibited by the defendant in a former bill against the plaintiff in the same bill, touching some matter in litigation in the first bill.(2)
- II. A bill of review, to examine and reverse a decree made upon a former bill, and signed by the person holding the great seal, and enrolled, whereby it has become a record of the court.(3)
- III. A bill in the nature of a bill of review, brought by a person not bound by the former decree.(4)
- IV. A bill to impeach a decree upon the ground of fraud.(5)
- V. A bill to suspend the operation of a decree on special circumstances, or to avoid it on the ground of matter arisen subsequent to it.(6)
- \*VI. A bill to carry a decree made in a former suit into execution.(7) [ \*445 ]

(1) See *Ld. Red. Tr. pl. p. 35*, 4th edit.

(2) A cross bill may be filed in Chancery to an original bill in the Exchequer; *Parker v. Leigh*, 6 Madd. 115; and see *Glegg v. Leigh*, 4 Madd. 204. In what cases a cross bill is proper, see 3 Atk. 812; *Hilton v. Barrow*, 1 Ves. jun. 283; *Piggot v. Williams*, 6 Madd. 95; 3 Swanst. 474; *Ld. Red. Tr. Pl. p. 80*, 82; 2 Madd. Ch. Pr. 429.

(3) See *Ld. Red. Tr. Pl. 83*, 90; *Taylor v. Sharp*, 3 P. Wms. 371, and the cases referred to in the notes, *ibid.* 6th edit. In what cases the leave of the court must be first obtained, see 2 Atk. 534; *Wilson v. Webb*, 2 Cox's Ca. 3; *Young v. Keightly*, 16 Ves. 348, 350, 2d edit.; 17 Ves. 177, 8, q. v. as to the distinction between a bill of review and a supplemental bill in nature of a bill of review, and also *Ld. Red. Tr. Pl. 91*.

(4) See *Ld. Red. Tr. Pl. 92*; 17 Ves. 178; *Osborne v. Usher*, 6 Bro. P. C. 20 Toml. edit.

(5) See *Ld. Red. Tr. Pl. 92*, 3; *Ambl. 229*; *Richmond v. Tayleur*, 1 P. Wms. 736; *Lloyd v. Mansell*, 2 P. Wms. 73; 3 P. Wms. 110; *Stevens v. Guppy*, Turn. 178.

(6) See *Ld. Red. Tr. Pl. 94*; 1 Ca. in Ch. 3, 61, 250.

(7) See *Ld. Red. Tr. Pl. 95*; 2 Vern. 409.

VII. A bill in the nature of a bill of revivor, to obtain the benefit of a suit after abatement in certain cases which do not admit of a continuance of the original bill.(8)

VIII. A bill in the nature of a supplemental bill to obtain the benefit of a suit either after abatement in other cases which do not admit of a continuance of the original bill, or after the suit is become defective, without abatement in cases which do not admit of a supplemental bill to supply that defect.(9)

## 2. BILLS OF REVIEW.\*

In a bill of this nature it is necessary to state(10) the former bill and the proceedings thereon, the decree, and the point in which the

(8) See Ld. Red. Tr. Pl. 97; 2 Vern. 407, 548, 671.

(9) See Ld. Red. Tr. Pl. 98; *Houlditch v. Marquis of Donegal*, 1 Sim. & Stu. 471.

(10) See Ld. Red. Tr. Pl. 88; 2 Madd. Ch. Pr. 536, 541.

\* A bill of review lies for error apparent on the record, or for material evidence not known in time for use at the former trial, and not discoverable by reasonable diligence at that time; *Dexter v. Arnold*, 5 Mason, 303; *Quarrier v. Carter*, 4 Hen. & M. 242; *Hedges v. Mulliken*, 1 Bland. 503; *St. Clair v. Piatt*, Wright, 532; *Massie v. Graham*, 3 McLean, 41; *Jenkins v. Prewitt*, 7 Blackf. 329; *Stevens v. Hey*, 15 Ohio, 313; *Greenleaf v. McDowell*, 4 Ired. Eq. 481; *James v. Fisk*, 9 S. & M. 144; *Kennedy v. Georgia State Bank*, 8 How. U. S. 586; *United States v. Sampeyac*, 1 Hemp. 118; *Wiser v. Blachley*, 2 Johns. C. R. 488; *Hollingsworth v. McDonald*, 2 Har. & J. 230; *Simms v. Thompson*, 1 Dev. Ch. 197; *Burn v. Poang*, 3 Dessau. 596; *Bradshaw v. Garrett*, 1 Porter, 47; *Iler v. Routh*, 3 How. (Miss.) 276; *Starke v. Mercer*, Ib. 377; *Edmondson v. Moseby*, 4 J. J. Marsh. 497; *Caller v. Shields*, 2 Stew. & Port. 417; and a bill filed after a final decree in the original suit between the original parties or their privies in representation, to correct errors in the proceedings or the decree, is a bill of review. *Whiting v. Bank of United States*, 13 Pet. 6. A bill of review is proper after a decree is enrolled, a supplementary bill, in the nature of a bill of review, before the enrolment; *Wiser v. Blachley*, 2 Johns. C. R. 488; *Hollingsworth v. McDonald*, 2 Har. & J. 230; *Ellzey v. Lane*, 2 Hen. & M. 589; *Iler v. Routh*, 3 How. (Miss.) 276; see also, *Meade v. Arms*, 3 Verm. 148; *Furman v. Coe*, C. C. E. 96; *Greenwich Bank v. Loomis*, 2 Sandf. Ch. R. 70; *Larson v. Moore*, 1 Texas, 22; and a decree is considered as enrolled after it is signed by the chancellor, and filed by the registrar. *Hollingsworth v. McDonald*, 2 Har. & J. 230.

A bill of review cannot be supported for matter existing at the time of the decree and discovered since, without affidavit of such matter, and of its existence at the time of the decree; *Hollingsworth v. McDonald*, 2 Har. & J. 230; nor will it lie where complainant himself dismisses his bill; *Jones v. Zollicoffer*, 1 Car. L. R. 376; nor for a mistake in the calculation of costs; nor for erroneous deductions from the evidence in the cause by the chancellor; nor for the discovery of new evidence which would not overturn the evidence before in the case. *Young v. Forgey*, 4 Hey. 189. That a complainant went to trial unprepared, is no ground for a bill of review; he should have asked for a continuance; *Calmes v. Ament*, 1 A. K. Marsh. 459; and a bill of review cannot be permitted after a demurrer has been allowed to a former bill of review, nor after an application for leave to file a bill of review has been refused; *Respass v. McClanahan*, Hardin, 342; nor can a subsequent bill of review be allowed where the original decree has been affirmed on a bill of review; *Strader v. Byrd*, 7 Ham. 184, 1st Part; nor can a bill praying for a review of a decree clearly erroneous, from the fact that some of the parties did not answer, and were not served with process, be sustained where the original bill did not contain matter which

party exhibiting the bill of review conceives himself aggrieved by it; and the ground of law, or new matter discovered, upon which he seeks to impeach it; and if the decree is impeached on the latter ground, it seems necessary to state in the bill the leave obtained to file it, (11) and the fact of the discovery. It has been doubted whether after leave given to file the bill, that fact is traversable; but this doubt may be questioned if the defendant to the bill of review can offer evidence that the matter alleged in the bill of review was within the knowledge of the party who might have taken the benefit of it in the original cause. The bill may pray simply that the decree may be reviewed, and reversed in the point complained of, if it has not been carried into execution. (12) If it has been carried into execution, the bill may also pray the further decree of the court to

(11) See note (3), *antea*, p. 444.

(12) See 17 Ves. 177.

would entitle the complainant to relief. *Todd v. Laughlin*, 3 A. K. Marsh. 535; *Todd v. Lackey*, 1 Litt. 270.

A bill of review, for error apparent upon the face of the decree, must be for an error in point of law, and cannot be sustained on the ground that a fact stated in the decree as proved, was in fact unsupported by proof; *Webb v. Pell*, 3 Paige, C. R. 368; *Manigault v. Deas*, 1 Bailey, Ch. 283; and it ought not to be granted to an interlocutory decree; but if there be error therein, it may be corrected on motion or petition. *Banks v. Anderson*, 2 Hen. & M. 20; *Jenkins v. Eldridge*, 3 Story, 299. Errors of law, against which relief can be had by bill of review, must be such as arise rather from obvious mistake or inadvertence appearing on the face of the decree, or at least of record, than from alleged error in the deliberate judgment of the chancellor, on a debatable question of law or equitable right. *Caller v. Shields*, 2 Stew. & Port. 417.

How far cumulative parol evidence is ground for a bill of review is doubtful. It seems that the new matter must tend to prove what was in issue, not to prove a title not before in issue; *Dexter v. Arnold*, 5 Mason, 303; *Huffacre v. Green*, 4 Hey. 51; *Love v. Blewit*, 1 Dev. & Bat. Ch. 108; *Randolph v. Randolph*, 1 Hen. & M. 181; *Respass v. McCanahan*, Hardin, 451; and unless discovered after the decree is pronounced, is not ground for a bill of review. *Winston v. Johnson*, 2 Munf. 305; *McCrackin v. Finley*, 1 Bibb, 455; but see *Caller v. Shields*, 2 Stew. & Port. 417. Where the discovery was made in time to have been brought forward by amendment or supplemental bill, a bill of review cannot be sustained; *Barnes v. Dickinson*, 1 Dev. Ch. 326; see also, *Spaight v. Adams*, 1 Freem. Ch. 318; but where a bill of review is founded on new matter discovered since a decree made, it cannot be filed without leave. *Pfeltz v. Pfeltz*, 1 Md. Ch. Decis. 455; *Simpson v. Watts*, 6 Rich. Eq. (S. C.) 364.

It is not necessary to plead the former decree to a bill of review, where the decree is fully and fairly stated in the bill; *Webb v. Pell*, 3 Paige, C. R. 368; see also, *Gilchrist v. Buie*, 1 Dev. & Bat. Ch. 346; *Dougherty v. Morgan*, 6 Monr. 151; *Randon v. Cartwright*, 3 Texas, 267; and where the decree states the facts on which it was rendered, on a bill of review, a party will not be allowed to show that the decree is at variance with other proofs in the cause; *Caller v. Shields*, 2 Stew. & Port. 417; and on a bill of review for errors of law in the decree, new matters of fact cannot be alleged in the answer. *Thornton v. Stewart*, 7 Leigh, 128. Where the bill alleges new matter, which is denied by the answer, it will be dismissed at the hearing, unless the plaintiff proves such new matter, and that it was discovered after the decree in the original suit. *Barnett v. Smith*, 5 Call. 98.

A bill of review will not lie in one court to review the decree of another court, although a bill to enforce the decree is brought in another court than that in which it was rendered. *Vanmeter v. Vanmeters*, 3 Gratt. 148. It is indispensable, that in a bill of review all the parties to the original decree, or their representatives, should be parties. *Friley v. Hendricks*, 27 Miss. (5 Cush.) 412; see also, *Sloan v. Whiteman*, 6 Ired. 434. The mode of filing a bill of review is by petition, setting forth the grounds, and asking leave to file the bill. *Massey v. Graham*, 3 McLean, 41.

It has been held, that a bill of review for errors apparent on the face of the record, will not lie after the time when a writ of error could be brought. *Creath v. Smith*, 20 Miss. (5 Bennett,) 113.

put the party complaining of the former decree into the situation in which he would have been if that decree had not been executed. If the bill is brought to review the reversal of a former decree, it may pray that the original decree may stand. The bill may also if the original suit has become abated, be at the same time a bill of revivor. A supplemental bill may likewise be added if any event has happened which requires it ;(13) and particularly if any person not a party to the original suit becomes \* interested in the subject, he must be made a party to the bill of review by way of supplement.(14)

[ \*446 ]

CLXII. *Bill of revivor and supplemental bill in nature of a bill of review(15) to reverse a decree made for establishing a will devising lands for the purpose of founding a college, praying also for an injunction to restrain the heir at law of the testator from applying to the Crown for a charter and license.*

To, &c.

Information exhibited.

All the defendants appeared, but before answers put in one of the defendants died. Supplemental information exhibited.

All the defendants to the original and supplemental information put in their answers.

Witnesses examined and publication passed.

Decree made, declaring the testator's will well proved, and that the trusts ought

Humbly complaining sheweth unto your lordship your orator G. B. of, &c., That on — his Majesty's then Attorney-General at the relation of — exhibited an information in this honorable court against M. D., &c.,(16) setting forth that, &c. and that said information therefore prayed, &c. And your orator further sheweth unto your lordship that all the defendants to the said information appeared thereto, but before they had put in their answers the said defendant D. E. died, and E. K. being appointed Master of the said College, a supplemental information was exhibited against him, praying the like relief against him as was prayed against the said D. E. And your orator further sheweth unto your lordship that all the defendants to the said original and supplemental informations put in their answers thereto, and that the said defendant M. D. by her answer said, &c. And your orator further sheweth unto your lordship that several witnesses were examined in the said cause, and publication duly passed therein, and that the said cause came on to be heard on —, when upon debate of the matters and hearing the charter granted to the University, &c. and the proofs taken in the said cause read, and what was alleged by the counsel on both sides, his lordship declared the will and codicil of the said testator Sir G. D. well proved, and that the same ought to be established and the trusts thereof performed and carried into execution, &c. but the said decree has never hitherto been signed and enrolled. And your orator further sheweth unto your lordship that no other proceedings have been had in the said cause, save the taxing the costs of the several parties therein, which have been paid as directed by the said decree. As by the said original and sup-

(13) See *Price v. Keyte*, 1 Vern. 135.

(14) *Sands v. Thorowgood*, Hardr. 104; Ld. Red. Tr. Pl. 90.

(15) See *Moore v. Moore*, 2 Ves. sen. 596; *Perry v. Phelps*, 17 Ves. 176.

(16) See form No. CLXVIII, *postea*.

plemental informations answers decree and other proceedings now remaining as of record in this honorable court, reference being thereunto had will appear. And your orator further sheweth unto your lordship by way of supplement by leave of his honorable court first duly had and obtained for that purpose, that previously to the marriage of the said defendant M. D. with your orator G. B. the said real estates so devised to her by the said Sir G. D.'s will as aforesaid, \*were in prospect of the said marriage conveyed and settled so that the said M. D. had power by any deed or writing duly executed by her, &c. or by her will signed, &c. to direct limit give dispose or appoint the same in such manner as she should think proper, notwithstanding her said then intended coverture, and in pursuance of such power, she being then the wife of your orator, did by her last will and testament bearing date —, give to her husband your orator all her lands, &c. in the county of S. and a legacy of £7000, and after giving several specific and pecuniary legacies, she gave all her real estates in the counties of C. and B. to your orator and his heirs forever. And your orator further sheweth unto your lordship that the said M. D. departed this life on —, leaving — (a defendant hereinafter named) her heir at law. And your orator further sheweth unto your lordship, that — (defendants in the said informations named) have lately departed this life, and that — of — (also defendants hereinafter named) are now their legal personal representatives. And your orator further sheweth that he is advised that the aforesaid decree bearing date the — day of —, is erroneous, for that it appears by the said decree that this honorable court declared that the said Sir D. G.'s will ought to be established, and the trusts thereof performed and carried into execution, particularly the trusts of the said charity, in case, &c. and also for that the residue of the said decree is consequently erroneous, and therefore your orator doth humbly insist that the said several informations ought to have been dismissed out of this honorable court. And your orator further sheweth that, &c. [*stating the petition for a rehearing.*] And your orator further sheweth unto your lordship that your orator hath applied to his Majesty's said Attorney-General and to the said defendants the Chancellor Masters and Scholars of the said University of C. and requested them to desist from prosecuting the said decree, and he well hoped that they would accordingly have desisted therefrom. BUT NOW SO IT IS, may it please your lordship that, &c. [*see form IV. p. 5, and note (n), ibid.*] they some or one of them are endeavoring to disturb your orator in the quiet possession of the said estates so devised to him as aforesaid. And the said — (*the said M. D.'s heir at law*) controverts the due execution of her said will and her power to make the same, and the said defendants the Attorney-General and the said Chancellor Master and Scholars of the said University of C. threaten that they will prosecute the decree and prevail upon the said — the heir at law of the said Sir G. D. to apply to the Crown for such charter and license as mentioned in the said decree, and they allege that they have actually filed an information in this honorable court to carry the said decree into execution; and the

to be performed.

The decree not yet signed and enrolled.

No other proceedings had, except taxing costs.

[\*447]

Supplemental matter,—

That previously to the marriage of one of the defendants, a settlement was made by which a power of appointment was reserved to her over the settled estates.

That in pursuance of such power, she made a will appointing the estates to her husband the plaintiff;

Her death, leaving — her heir at law and personal representatives.

Deaths of other defendants.

That the decree is erroneous, and therefore the informations ought to have been dismissed.

Petition of rehearing presented.

Applications made to the defendants.

That the heir at law of the deceased disputes her will; that the other defendants threaten to

prosecute the  
decree;  
and allege  
that they have  
filed an infor-  
mation to  
carry the de-

[ \*448 ]

cree into exe-  
cution; and  
that the heir  
of the testator  
intends to ap-  
ply for the  
charter and  
license.

Charge that  
no such appli-  
cation ought  
to be made,  
that the de-  
cree ought not  
to be prosecu-  
ted; that the  
cause ought  
to be reheard,  
and the decree  
reversed; that  
the informa-  
tions ought to  
be dismissed,  
and the testa-  
tor's heir at  
law restrained  
from applying  
to the Crown  
for a charter  
and license,  
and that the  
other defend-  
ants ought to  
be restrained  
from prosecu-  
ting the de-  
cree.

That the suit  
ought to be  
revived.

Prayer.

defendant — the heir at law of the said Sir G. D. gives out that he intends forthwith to apply for the said charter and license. Whereas your orator charges that no such application ought to be made, and that the said decree ought not to be prosecuted consistent with the laws of the land, and that the said cause ought to be reheard by this honorable court, and the said decree reviewed and reversed, and that the said informations ought to \*be dismissed, and that in the mean time and until the said cause shall receive the further judgment of this honorable court, the said defendant — the heir at law of the said Sir G. D. ought to be restrained by the injunction of this honorable court from applying to the Crown for such charter and license as aforesaid, and that the said defendants the Chancellor Masters and Scholars of the said University of C. ought in like manner to be restrained from prosecuting the said decree or proceedings in the said supplemental information. And your orator is advised that he is entitled to have the said cause heard upon such supplemental matter as aforesaid at the same time that it is reheard on the said original and supplemental information, and that the said suit and proceedings which became abated by the death of the said M. D. and — ought to be revived against the said —. To THE END therefore that, &c. [*see form VI. p. 5, and interrogate to the supplemental matters.*]

And that the said defendants may answer the premises; And that the said suit and proceedings had therein may stand and be revived against the said —, or that they may show good cause to the contrary; and that the said cause may be heard on such supplemental matter as aforesaid, at the same time that it is reheard on the said original and supplemental informations; and that the said decree may be reversed; and that the said several informations may be dismissed out of this honorable court; and that in the meantime and until the said cause shall receive the further judgment of this honorable court, that the said defendant — (the heir at law of the said Sir G. D.) may be restrained by the injunction of this honorable court from applying to the Crown for such charter and license as aforesaid; and that the said defendants — the Chancellor Masters and Scholars of the said University of C. may in like manner be restrained from prosecuting the said decree or proceeding in the said supplemental information; And that your orator may have such further and other relief in the premises and under the circumstances hereinbefore particularly mentioned as to your lordship shall seem meet, and the nature of this case may require. May it please, &c. [*see note (12), antea, p. 416, and forms No. 2, and 4, p. 6.*]

## \*6. A BILL TO CARRY A DECREE INTO EXECUTION.(17)

CLXIII. *Supplemental bill filed by infants by their next friend against the plaintiffs and defendants in the original bill, praying to have the accounts directed by the decree made in the original cause prosecuted; the infants having been born since the decree was pronounced, and being entitled under the will of their grandfather, in the event of their attaining twenty one, to a share of his real and personal estate in reversion expectant upon the decease of their mother; the supplemental bill charging the executors and trustees with neglect in not having duly invested the trust moneys according to the will.*

*(The interrogatories are inserted.)*

To, &c.

Humbly complaining show unto your lordship your oratrixes and orators M. A. B., E. G. B., and G. D. B. respectively, infants under the age of twenty-one years (that is to say) your oratrix M. A. B. of the age of — years or thereabouts, your oratrix E. G. B. of the age of — or thereabouts, and your orator G. D. B. of the age of — or thereabouts, by J. L. of — their next friend, That on or about — your oratrixes' and orator's mother by her then name of M. B. together with W. B. and G. D. B., being all then infants under the age of twenty-one years but who have all since attained that age, by their next friend exhibited their original bill of complaint in this honorable court against Sir J. M. bart. J. W., W. C. the younger, B. B. and F. I. since deceased, as defendants thereto, thereby stating such several matters and things as are therein particularly mentioned and set forth, and praying that, &c. And your oratrixes and orator further show unto your lordship that all the said defendants being duly served with process appeared and put in their answers to the said original bill, and the said cause being at issue and witnesses having been examined therein the same came on to be heard before the then Lord High Chancellor of Great Britain on the — day of —, when his lordship was pleased to declare the will of the said testator W. B. dated the — day of — to be well proved, and that the same ought to be established, and the trusts thereof performed and carried into execution, and did decree the same accordingly; And it was ordered that, &c. And your oratrixes and orators further show unto your lordship that the said M. B. having intermarried with G. B. of D. in the county of B. esq. your oratrixes' and orator's father, the said suit and proceedings so far as concerned the said M. B. became \*abated, and in consequence thereof they on or

Original bill exhibited by the plaintiffs' mother and others against the trustees of the testator's will.

The defendants appeared and put in their answers. Witnesses examined.

Decree made, declaring the will well proved, and that the trusts ought to be carried into execution.

Marriage of the plaintiffs' mother.

[ \*450 ]

(17) A bill for this purpose is generally partly an original bill, and partly a bill in the nature of an original bill, though not strictly original; and sometimes it is likewise a bill of revivor, or a supplemental bill, or both. *Ld. Red. Tr. Pl. 97.*

Bill of revivor exhibited by the plaintiffs' parents. about the — day of — exhibited their bill of revivor in this honorable court, praying that the same might stand revived and be in the same plight and condition as the same were in at the time of the intermarriage of the said complainant; and that the said decree made on the hearing of the said cause might be directed to be prosecuted and carried into full effect, and that all proper and necessary directions might be given for effectuating the several matters afore-

A bill of revivor also exhibited by the other plaintiffs in the original cause.

An order made directing the trustees to pay a sum of money into court;

the same paid in and invested in the Accountant-General's name.

Supplemental matter,—

That the plaintiff's mother is entitled to the interest of her share for her life, and that the principal will be divisible amongst her children; That the plaintiffs are her only children.

That the accounts directed by the decree have never been prosecuted.

said. And your oratrixes and orator further show unto your lordship that W. B. and G. D. B. the complainants in the original bill exhibited their bill of revivor in this honorable court on or about the — day of — against the said G. B. and M. his wife, stating their intermarriage, whereby the said suit and proceedings had become abated so far as concerned the said M. B. and praying that the said suit and proceedings might stand and be revived against them the said G. B. and M. his wife, or that they might show good cause to the contrary. And your oratrixes and orator further show unto your lordship that by an order bearing date on or about the — day of — your lordship was pleased to order that, &c. [*directing the trustees to pay the sum therein mentioned into the bank, to the account of M. B.*] And your oratrixes and orator further show unto your lordship that in pursuance of the said order the said sum of £— was paid into the bank with the privity of the Accountant-General, and was afterwards laid out by him in the purchase of £— three per cent. consolidated annuities, which are now standing in the name of the said Accountant-General in trust in this cause, to the separate use of the said M. B. As in and by the said original bill answers decree bills of revivor order and other proceedings now remaining filed as of record in this honorable court, and to which your oratrixes and orator for their greater certainty crave leave to refer, will when produced more fully appear. And your oratrixes and orator further show unto your lordship by way of supplement that no settlement having been made previously to the marriage of the said G. B. and M. B. of the part or share of the said M. B. in the residuary estate of the said testator W. B., the interest and dividends thereof by the will of the said testator become payable to the said M. B. for her sole and separate use during her life, and the principal thereof will be divisible after her death amongst such children of the said M. B. who being a son or sons shall live to attain the age or ages of twenty-one years, or being a daughter or daughters shall live to attain the age or ages of twenty-one years, or be married which shall first happen. And your oratrixes and orator further show unto your lordship by way of supplement that your oratrixes and orator are the only children of the said M. B. And your oratrixes and orator further show that the accounts of the real and personal estate of the said testator directed by the said decree of the — day of — have never in any manner been prosecuted, and that no part of the produce of the real or personal estate of the said testator hath ever been paid into or secured by this honorable court, other than the aforesaid sum of £— 3 per cent. consolidated bank annuities which is standing in the name of the said Accountant-General as aforesaid in trust in



\*that cause, to the separate account of the said M. B. And your oratrixes and orator further show unto your lordship that the said defendants Sir J. M., J. W., W. C., and B. B. upon or soon after the death of the said testator possessed themselves of the personal estate and effects of the said testator to a great amount, and the said defendants also sold the real estates of the said testator or some parts thereof, and from the rents and produce of such real estates possessed other large sums of money; and the said defendants did from time to time lay out and invest or but for their wilful default and neglect might from time to time have laid out and invested the moneys so received by them from or in respect of the real and personal estate of the said testator, in such manner that the part or share of the said M. B. therein after making thereout a reasonable allowance for her maintenance and education did or might have greatly accumulated during her minority. And your oratrixes and orator further show that they are, as they are advised, entitled to have the benefit of the said suit and proceedings and to prosecute the said decree against the said several defendants. To THE END therefore that, &c. [see form VI. p. 5.] Whether at or about the time hereinbefore mentioned or at some other time and when your oratrixes' and orator's mother by her then name of M. B. together with W. B. and G. B. B. did not exhibit their original bill of complaint in this honorable court against such persons as are hereinbefore in that behalf mentioned as defendants thereto, thereby stating such several matters and things as in the said original bill particularly mentioned and set forth, and praying to the purport and effect hereinbefore set forth or to some such or the like or some other and what purport and effect; And whether the said cause did not come on to be heard at or about the time hereinbefore in that behalf stated or at some other time and when; And whether such decree was not made therein as hereinbefore in that behalf set forth or to some such or the like or some other and what effect; And whether the said M. B. did not intermarry with the said G. B.; And whether thereupon the said G. B. and M. B. his wife did not at or about the time hereinbefore in that behalf stated or at some other time and when exhibit their bill of revivor in this honorable court, thereby praying to the effect hereinbefore in that behalf stated or to some such or some other and what effect; And whether the said W. B. and G. B. B. two of the complainants in the said original bill named did not likewise exhibit their bill of revivor in this honorable court at or about the time aforesaid, or at some other time and when, thereby stating and praying to the purport and effect hereinbefore in that behalf set forth, so far as the same is herein set forth, or to some such or the like or some other and what purport and effect; And whether at or about the time hereinbefore in that behalf stated or at some other time and when such order as hereinbefore in that behalf set forth was not made in the said cause or some other and what order to such or the like or some other and what effect; And whether any and what settlement was ever and when made previously to the marriage of the said G. B. and M. B. of the part or share of the said M. B. in the residuary estate of the said testator W. B. and if not why not; And whether

That no part of the produce of the testator's real and personal estate has been invested, except the aforesaid sum.

That the trustees have received large sums.

That the share to which the plaintiff's mother was entitled ought to have greatly accumulated during her minority.

Plaintiffs entitled to prosecute the decree.

Interrogatories to the statements.

Interrogatories to the supplemental matter.

\*the interest and dividends of such residuary estate by the will of the said testator or otherwise and how did not become payable to the said M. B. for her sole and separate use during her life or how otherwise; And whether the principal thereof will not become divisible after her death in manner hereinbefore in that behalf stated or how otherwise; And whether your oratrixes and orator are not the only children of the said M. B.; And whether the accounts of the real and personal estate of the said testator directed by the said decree of the — day of — have ever and when in any and what manner been prosecuted; And whether any and what part of the produce of the real or personal estate of the said testator hath ever and when been paid into or secured by this honorable court other than the aforesaid sum of £—— 3 per cent. consolidated bank annuities; And whether such sum of £—— or some other and what sum is not now standing as aforesaid in trust in this cause to the separate account of the said M. B. or how otherwise; And whether the said defendants Sir J. M. J. W. W. C. and B. B. or some or one and which of them have not possessed themselves of the personal estate and effects of the said testator to a great or some and what amount; And whether the said defendants or some or one and which of them have not also sold the real estates of the said testator or some and what parts thereof or how otherwise; And whether from the rents and produce of such real estates they or some or one and which of them have not possessed other large and what sums of money; And whether the said defendants or any or either and which of them have or hath at any time or times and when in particular laid out and invested the moneys so received by them in respect of the real and personal estate of the said testator or any and what parts thereof and to what amount in particular in any and what stocks or funds or other and what securities and if not why not; And whether the part or share of the said M. B. in the real and personal estate of the said testator after making thereof a reasonable allowance for her maintenance and education, hath not or but for the wilful default and neglect of the said defendants some or one and which of them might not greatly or in some and in what degree have been accumulated during her minority; And whether your oratrixes and orator are not entitled to have the benefit of the said suit and proceedings and to prosecute the decree against the said several defendants and if not why not.

And that the said defendants may answer the premises; and that your oratrixes and orator may have the benefit of the said suit and proceedings, and may be at liberty to prosecute the said decree of the — day of — so far at least as may be necessary to ascertain the accumulated part or share of the said M. B. in the produce of the real and personal estate of the said testator; and that in taking the accounts of the said real and personal estates of the said testator the said defendants the trustees and executors may be charged with such sums of money as have been or but for the wilful default and neglect of the said defendants might have been accumulated by duly laying out and investing pursuant to the will of the said testator and the said decree the moneys which are or ought

to have been from time to time in the hands of the said defendants \*the trustees and executors; and that such further sum as together with the said sum of £—— 3 per cent. consolidated annuities will make up the part or share of the said M. B. in the real and personal estates of the said testator may be paid into and secured by this honorable court for the benefit of your oratrixes and orator or such of them as may eventually become entitled thereto; and that for these purposes all proper directions may be given; and that your oratrixes and orator may have such further and other relief in the premises as the nature of the case may appear to require and to your lordship shall seem meet. May it please, &c. [*see form No. 1, p. 6.*]

[ \*453 ]

J. L.

*Pray subpoena against Sir J. M.  
J. W. W. C. B. B. W. B. G.  
D. B. G. B. and M. B. his  
wife.*

## 8. BILL IN THE NATURE OF A SUPPLEMENTAL BILL.

CLXIV. *Bill in the nature of a supplemental bill(18) against the executor of one of the defendants to the original bill who had died abroad without having put in his answer, he being entitled to a legacy under his father's will in case he claimed the same within seven years, the payment whereof had been restrained by an injunction obtained by the plaintiff in the original bill; the prayer of the supplemental bill is, that the legacy with its accumulations may be declared to be part of the deceased's personal estate and may be applied in payment of the debts due to the plaintiff and his other creditors.*

Humbly complaining sheweth unto your lordship your oratrix L. S. T. of, &c. on behalf of herself and all other the creditors of I. L. the younger, late of, &c. who shall come in and seek relief by and contribute to the expense of this suit. That on or about — your oratrix exhibited her original bill of complaint in this honorable court against the said I. L. since deceased, A. M. C. now the wife of R. H. clerk, and the Governor and Company of the Bank of England thereby stating amongst other things that I. L. the elder late of — in and by his last will, &c. and praying that, &c. And your oratrix further sheweth that soon after the filing of the said bill of complaint your oratrix obtained an injunction to restrain the said defendant A. M. H. from transferring the said sum of stock,

Original bill exhibited by the same plaintiff against I. L. the younger and others. An injunction obtained to restrain the transfer of a sum of stock.

(18) In the former edition this bill is inserted as a bill of supplement in the nature of an original bill, under the head of Bills of Supplement and Revivor. From the imperfect statement there given it is difficult to decide under what head it should be properly classed. The object of the original bill seems to have been to attach the legacy in the hands of the executrix.

[ \*454 ]

Answer put in  
by two of the  
defendants.

Supplemental  
matter—

Death of I. L.  
the younger,  
abroad;

His will,

The same pro-  
ved by G. W.  
who has pos-  
sessed himself  
of the personal  
estate.

That after the  
injunction  
was obtained,  
two of the de-  
fendants wrote  
letters to I. L.  
the younger,  
and received  
others, from  
him;

and that they  
induced him  
to delay his  
return to Eng-  
land in order  
to claim his  
legacy;

That they re-  
ceived the di-  
vidends there-  
of, and have  
or ought to  
have laid out  
the same to  
accumulate.

Charge that  
the legacy and  
accumula-  
tions are part  
of the personal  
estate of I. L.  
the younger.

Interrogato-  
ries relating  
to the letters,  
&c.

and that the said A. M. H. and the said R. H. her husband \*have since put in their joint and several answer to the said bill, but that no further proceedings have been had in the said cause. As in and by, &c. And your oratrix further sheweth unto your lordship by way of supplement that before the expiration of — years from the death of the said testator I. L. and in or about — the said defendant I. L. the son departed this life at M. aforesaid without having as it is alleged ever returned to England since the death of the said testator, but having duly made and published his last will and testament in writing, which hath since been duly proved in the Prerogative Court of the Archbishop of Canterbury by G. W. of, &c. (one of the defendants hereto) the executor in England, and the said G. W. hath by virtue thereof possessed himself of the estate and effects of the said I. L. the son to a considerable amount. And your oratrix further sheweth by way of supplement that after the filing of the said original bill of complaint, and the obtaining of the said injunction to restrain the transfer of the said stock, the said defendants R. H. and A. M. H. or one of them wrote divers letters to the said I. L. the son at M. and received from him divers other letters, and the said defendants or one of them have now or lately had in their custody or power the letters so received from the said I. L. the son, and also copies of the letters written by them to the said I. L. the son, or memorandums thereof, or the said defendants can set forth the purport and effect of the letters so received and written by them respectively. And your oratrix further sheweth that the said defendants R. H. and A. M. H. in the said letters so written to the said I. L. the son informed the said I. L. of the suit instituted by your oratrix as aforesaid, and of the injunction obtained therein to restrain the transfer of the said sum of stock, and the said defendants thereby prevailed upon or induced the said I. L. the son to delay returning to England in order to make a formal demand for the sum of stock according to the terms of the said testator's will. And your oratrix further sheweth that the said defendants R. H. and A. M. H. have from time to time received the dividends on the said sum of stock, and have or ought to have laid out the same to accumulate according to the directions of the said testator's will. And your oratrix charges that the said sum of stock and all accumulations thereof are part of the estate and effects of the said I. L. the son, and ought to be applied in or towards the satisfaction of your oratrix and the other creditors of the said I. L. the son in a due course of administration. But the said G. W. colludes with the said other defendants, and declines to take any proceedings to recover and apply the said stock and accumulations accordingly. To THE END therefore that, &c. [see form VI. p. 5.]

And whether after the filing of the said original bill of complaint and the obtaining of the said injunction to restrain the transfer of the said stock or at some other time or times and when in particular the said defendants R. H. and A. M. H. or one and which of them or some other person or persons and whom by their or one and which of their instructions or with their or one and which of their privity did not write divers or some and what letters or letter to the said

I. L. the son, or to some other person or persons and whom on his behalf and whether not to M. or elsewhere and where; And whether \*they or one and which of them or some other person or persons and whom with their or one and which of their privity did not receive from him or some other person or persons and whom on his behalf and when in particular divers or some and what other letters or letter; And whether the said defendants or some and which of them or some other persons or person and whom on their or one and which of their behalf have not now or have not had lately and when last in their or one and which of their custody or power the said letters or letter so received from the said I. L. the son, or from some person or persons and whom on his behalf or some or one and which of such letters or letter or what hath become of such letters or letter; And whether they the said defendants or one and which of them or some other persons or person and whom on their way or one and which of their behalf have not now or have not had lately and when last in their or one and which of their custody or power some and what copies or copy memorandums or memorandum of the said letters or letter or some or one and which of the said letters so written as aforesaid to the said I. L. the son, or to some person or persons and whom on his behalf; And that the said defendants may set forth the said several letters or letter so written or received as aforesaid in the very words and figures thereof respectively, and may leave the letters or letter so received and the copies and memorandums of the letters or letter so written in the hands of their clerk in court for the usual purposes; And if the said defendants have no such letters or letter copies or copy memorandum or memorandums in their or either of their custody or power, then that they may set forth the purport and effect of all such letters or letter so written or received as aforesaid, fully and particularly to the best of their respective knowledge and belief; And whether the said R. H. and A. M. H. or one and which of them or some other person or persons and whom on their or one and which of their behalf or with their or one and which of their privity did not in some or one and which of the said letters or letter so written as aforesaid, inform the said I. L. of the suit so instituted by your oratrix as aforesaid, and of the injunction obtained therein to restrain the transfer of the said sum of stock or to some such and what effect; And whether the said defendants or one and which of them or some other person or persons, and whom on their behalf or with their privity did not thereby or by some other and what means prevail upon or induce the said I. L. the son to delay returning to England in order to make a formal demand for the said sum of stock according to the terms of the said testator's will, or for what reason as the said defendants or either and which of them know or believe did the said I. L. the son delay returning to England.

And that the said defendants may answer the premises. And that the said sum of £—— 5 per cent. bank annuities, together with the accumulations which have or might and ought to have been made thereof may be declared to be part of the personal estate and effects of the said I. L. the son, and may be applied together with all other personal estate and effects of the said I. L. the son which have been

[ \*456 ] possessed or received by the said G. W. in payment of your oratrix and the other creditors of the said I. L. the son in a due course of \*administration, and that for this purpose all proper directions may be given. [*And for further relief, see form VIII. p. 5.*]

J. L.

*Pray subpoena against R. H. and  
A. M. his wife, and G. W.*

[ \*457 ]

## \*CHAPTER VI.

### INFORMATIONS.(1)

CLXV. *Information for a discovery and account of the timber and other trees and underwood cut down by the direction of the defendant, in the king's forest, in the county of S. and of the loppings, &c. taken by the defendant on the falls of timber directed for the use of the navy; the defendant claiming to be entitled thereto as keeper of the forest under a grant from the Crown; An injunction is also prayed to restrain him from cutting down any more trees, &c.*

Seisin in his Majesty in right of his Crown.

That the defendant or his servants have cut down timber trees, &c., and converted the same to his own use.

That great numbers of trees have been cut down

Informing sheweth unto your honors Sir A. M. knight his Majesty's Attorney-General on behalf of his Majesty, That his Majesty is and hath been for many years last past seised in his demesne as of fee in right of his Crown, of and in the forest and chase of A. H. and W. in the county of S. and of and in the lands lying and being within the same, and the timber and other trees wood and underwood growing thereon; And the said Attorney-General further informeth your honors that various persons and particularly the Right Honorable Lord S. (the defendant hereinafter named) or his agents or servants with his privity by his order or for his use, hath or have cut great numbers of such timber and other trees wood and underwood, and converted the same to his own use; And the said Attorney-General further informeth your honors that his Majesty or the proper officers hath or have from time to time caused great numbers of timber or other trees to be cut down for the use of the navy and for other purposes, and when such falls of timber and other trees

(1) Informations in every respect follow the nature of bills, except in their style. When they concern only the rights of the Crown, or of those whose rights the Crown takes under its particular protection, they are exhibited in the name of the King's Attorney or Solicitor-General as the informant: in the latter case, always, and in the former, sometimes, a relator is named who in reality sustains and directs the suit; where he has an interest in the matter in dispute, and sustains the character of plaintiff as well as of relator, the pleading is styled an information and bill; see Ld. Red. Tr. Pl. p. 22, 99, 4th edit. and the cases referred to in the notes, *ibid.*

In cases of a breach of trust by trustees of a charity, or whenever the direction or order of a court of equity is deemed necessary for the administration of any trust for charitable purposes, a summary mode of relief is given by means of a petition under the 52 Geo. 3, c. 101. See further, 2 Madd. Ch. Pr. 154.

have been made, his Majesty's officers and other servants have in order to prepare the said timber and other trees for use, separated the bodies of the timber trees from the lops tops and \*boughs, and that the said lops tops and boughs were of considerable value, and upon such occasion the said Lord S. or his agents with his privity by his order and for his use hath or have carried away great quantities of the said lops tops and boughs, and converted the same to the use of the said Lord S.; And the said Attorney-General further informeth your honors that his Majesty in right of his Crown is entitled to have an account taken of the timber and other trees wood and underwood so cut down and converted by or by the order of the said Lord S. and to have the value of the same accounted for to the proper officers for his Majesty's use and also an account taken of the lops tops and boughs so taken and carried away and converted; and applications have been frequently made to the said Lord S. to come to such account and to make such payment, with which applications he ought in justice and equity to have complied. BUT NOW SO IT IS may it please your honors that the said Lord S. refuses so to do; and he threatens and intends to continue to cut down more timber and other trees wood and underwood; And to color such his refusal and threats, he pretends that neither he nor any person or persons by his order or with his privity hath or have cut down any timber or other trees wood or underwood, and converted the same to his own use. Whereas the said Attorney-General charges the contrary thereof to be the truth, and that the said Lord S. hath yearly and for many years last past cut down or in manner aforesaid caused to be cut down great number of timber and other trees and great quantities of underwood; and particularly that some time in the beginning of this present year —, some person or persons as the servants or by the special order of the said Lord S. cut down in W. forest as aforesaid a very great number of oaks hollies and other trees and sold the same, and that the said Lord S. received the price thereof and converted the money arising therefrom to his own use, as would appear from various books papers and accounts kept by or by the order or for the use of the said Lord S. and in his possession custody or power; and so the said Lord S. will sometimes admit. And the said Lord S. at times alleges that he hath not taken nor caused to be taken and carried away any lops tops or boughs of timber or other trees which have been cut down by order of his Majesty or of the proper officers in that behalf for his Majesty's use. Whereas the said Attorney-General charges the contrary thereof to be the truth, and that lately and when there have been falls of timber and other trees by order of his Majesty or of the proper officers for his Majesty's use, some persons or person as the agents or servants of the said Lord S. or by his order or for his use, carried away great quantities of the lops tops and boughs cut off from the said timber and other trees, and the same or some part thereof were or was sold or in some way disposed of, and the same or the price thereof was received or accounted for to the said Lord S. and so it would appear from certain books papers accounts or writings in his possession custody or power if the same were produced, and so

for the use of the navy.

[ \*458 ]

That the lops, tops, and boughs have been carried away by the defendant.

That his Majesty is entitled to an account thereof and of the trees cut down.

Applications made to the defendant.

Pretence that the defendant has not cut down any trees.

Charge the contrary;

And that some persons by the order of the defendant, cut down many oaks, &c. and that the defendant received the money and applied the same to his own use.

Defendant alleges that he has not taken the lops of any trees cut down by order of his Majesty.

Charge the contrary;

and that he has sold large quantities thereof.

Defendant alleges that he is entitled under some grant, as keeper of the forest, to house-bote, and fire-bote, &c.

[ \*459 ]

Charge that he is not entitled but under authority of the surveyor-general.

That the quantity taken is unreasonable;

And that the greater part thereof has been sold, and the value received by the defendant.

Defendant alleges that under the words of the grant he is entitled to the lops of trees for his Majesty's use.

Charge the contrary;

that he refuses to comply with the requests made and intends to carry away the lops of other trees.

VI.

the said Lord S. will sometimes admit; But then he alleges that under some grant he is entitled to the office of keeper of the forest or chase of A. H. and W. with all offices liberties fees emoluments \*and privileges whatsoever thereunto belonging, to hold the same for some term of years not determined, and to enjoy the said office and the profits thereof and to take all wood blown down or thrown down, and house-bote and fire-bote for himself and the foresters and keepers of the said forest and chase; and that the said timber wood and underwood so cut down by the order of the said Lord S. and taken and converted, was by virtue of the said grant, and for the house-bote and fire-bote for himself and the said foresters and keepers. Whereas the said Attorney-General charges that the said Lord S. is not under the aforesaid grant entitled to take any timber wood or underwood for house-bote or fire-bote, but at the view or under the authority of the surveyor-general of the woods within whose district the said forest woods or chase is situated or some other officer of the forest. And the said Attorney-General further charges that even if the said Lord S. were entitled to take house-bote and fire-bote without the consent warrant or authority of any officer, yet he was not entitled to take any timber nor such number and quantities of other trees and underwood as aforesaid, because that the same was unreasonable and more than sufficient for the repairs of the houses and lodges and for fuel for their own consumption, and that in fact by far the greater part thereof was not employed in such repairs and fuel, but was actually sold and disposed of for other persons, and the price thereof paid or otherwise accounted for to the said Lord S., and so the said Lord S. will at some times admit; And at other times the said Lord S. alleges that the above stated words of the said grant giving him the boughs and branches of trees within the said forest cut or thrown down entitles him to take and convert to his own use all the lops tops and boughs of the timber and other trees felled or cut down by order of his Majesty or of the proper officers for his Majesty's use. Whereas the said Attorney-General charges the contrary, and that the said Lord S. is not by force of the said words nor by the said alleged grant entitled to take the said lops tops and boughs of any timber or other trees felled or cut down by order of his Majesty or of the proper officer of his Majesty, and so the said Lord S. will some times admit; but nevertheless he refuses to comply with the aforesaid requests and applications, and also threatens and intends on the next fall of timber and other trees by order of his Majesty or of the proper officers for his Majesty's use, to take and carry away and convert to his own use the lops tops and boughs of all such timber and other trees. All which actings doings pretences and refusals are contrary to justice and good conscience and tend to the injury of his Majesty in the premises and to the detriment of the realm. To THE END therefore that the said Lord S. may come to the aforesaid account and may be restrained from committing any more waste in the said forest or chase, and that the said Lord S. may upon his honor true answer make to the matters aforesaid, and more especially that he may answer and set forth Whether, &c. [*interrogating to the stating and charging parts.*] And



whether the said Lord S. hath not in his possession custody or power some and what books or book papers or accounts containing some and what entry or entries of the timber and other trees wood and underwood cut down and \*converted to the use of him the said Lord S., and also of the hollies aforesaid cut down in the beginning of the present year, or containing some and what entry or entries of the prices for which the whole of such particulars or some and which of them were sold, and when and to whom and of the moneys produced by them or some and which of them or of the manner in which the same and every or some and what part thereof were employed or consumed; And whether the said books papers and accounts or some and which of them are not now in the possession custody or power of the said Lord S. or what is become of the same and every of them, and that he may set forth a list of the same with their marks respectively, and may leave the same in the hands of his clerk in court for the inspection or perusal of his Majesty's said Attorney-General or his agents; And that the said Lord S. may set forth a full true and particular account of all the timber and other trees wood and underwood cut down by his order or with his privy and of the lops tops and boughs aforesaid taken and carried away by his order or for his use, and in what manner the same and every of them were consumed and employed, and for what price the same were sold.

Interrogatories for a discovery of books, accounts, &c.

[ \*460 ]

and of the trees, &c. cut down and of the lops, &c. carried away.

And that his Majesty may have the discovery aforesaid, the said Attorney-General hereby on behalf of his Majesty waiving all and all manner of forfeiture or penalty incurred by the said Lord S. by the waste or by any of the other acts stated or charged in the said information. And that an account may be taken under the direction of this honorable court of all the timber and other trees wood and underwood cut by or by the order of the said Lord S. or any of his servants or agents with his privy or of his use, and of the value of such timber and other trees wood and underwood; and also that an account may be taken of the lops tops and boughs of the timber and other trees felled and cut down by order of his Majesty or of the proper officers for his Majesty's use; and that the said Lord S. may be decreed to made satisfaction to his Majesty for the same; And that he may be restrained by the injunction of this honorable court from cutting down or from causing to be cut down any more timber or other trees wood or underwood, and also from taking and carrying away any more lops tops or boughs of timber or other trees cut down by order of his Majesty or of the proper officers for his Majesty's use. And that your lordship would be pleased to grant your informant on behalf of his Majesty such further and other relief as to your lordship may seem meet and the circumstances of this case may require. May it please, &c. [*see forms No. 3 and 5, p. 6, and 7.*]

Prayer.

Description of  
a particular  
street called  
V. lane,

and of the  
public foot-  
path on the  
south side  
thereof,

there being no  
thoroughfare  
for carriages.

Boundaries of  
the footway.

Claim set up many years since by certain persons of a right to make a public street, which claim was afterwards abandoned.

Statement of  
[ \*462 ]

Informing sheweth unto your lordship Sir E. L. knight his Majesty's Attorney-General, at the relation of A. B. &c. &c., That there is situate lying and being within the parish of St. J. in the city of W. a certain public street called V. lane leading from a certain other public street called B. street to a certain other public street called G. street, and communicating on the north side thereof with certain other public streets called C. street, Old B. street, and S. row. And his Majesty's Attorney-General by the relation aforesaid further sheweth that at the east end of the said street called V. lane there is a certain other public street called S. street leading from thence into a certain other public street called P. and that along the south side of the said street called V. lane from S. street to B. street there is and for many years past hath been a common and public foot-path which hath been from time to time paved with flag-stones at the expense of the inhabitants of the said parish of St. J. for the convenience of persons passing and repassing on foot, the said street called V. lane being a great public thoroughfare for foot passengers from B. street to S. street although there is not nor ever hath been any thoroughfare for carriages along the said street from B. street to S. street by reason of certain wooden posts which are and ever since the making of the said street called V. lane have been placed across the said street a few feet to the eastward of S. row. And his Majesty's Attorney-General at the relation aforesaid further sheweth that the said common and public footway from B. street to S. street is and ever since the making of the same hath been bounded on the south for the most part by a certain ancient brick wall which forms the northern fence and boundary of certain lands called M. gardens and B. gardens, and that there is not nor ever hath been any public way or opening on the north side of the said footway, so that his Majesty's subjects in passing and repassing on the same footway have at all times had the free and uninterrupted use thereof without any hurt hindrance or obstruction whatsoever. And his Majesty's Attorney-General at the relation aforesaid further sheweth that upwards of — years since, the then owners of the said lands called M. gardens and B. gardens severally claimed a right to open a public street or way from P. through their said respective lands into the said street called V. lane and threatened to make a public street or streets accordingly, but such claim being resisted on the part of the proprietors and inhabitants of the said several streets called V. lane C. street, Old B. street and S. row by reason of the disturbance and injury that would thereby be occasioned to the said several streets, the said owners of the said lands thought fit to abandon such claim, and afterwards by an act of parliament made and passed in the 12th year of the reign of his present Majesty, \*intituled, "An Act, &c."

It was provided, &c. which provision was inserted in the said act of parliament for the purpose of protecting the said streets called V. lane S. row C. street and Old B. street from any thoroughfare for carriages from P. to the said street called V. lane by the way of S. street or by any other means than by the way of B. street. And his Majesty's Attorney-General at the relation aforesaid further sheweth that his Royal Highness the Duke of Y. proprietor of the said lands called M. gardens and the defendant hereinafter named hath formed a plan for making and is about to make a public street or way for horses carts and carriages from P. through the said lands called M. gardens into the said street called V. lane over the aforesaid common and public footway on the south side of the said street; and in and towards the execution of such plan hath actually made an opening in the said ancient boundary wall and hath taken up a part of the flag pavement of the said footway. And his Majesty's Attorney-General at the relation aforesaid further sheweth that such public street or way so intended to be made by the said defendant his Royal Highness the Duke of Y. if carried into execution will greatly interrupt and obstruct the said common and public footway on the south side of the said street called V. lane and will be to the great damage and common nuisance of all his Majesty's subjects passing and repassing by the said footway. And his Majesty's Attorney-General at the relation aforesaid further sheweth that such intended street if carried into execution will be opposite to the end of S. row and westward of the said wooden posts so as aforesaid placed across the said street called V. lane, and by making a direct thoroughfare for horses carts and carriages from P. into the said street called V. lane, will actually defeat the provision made as aforesaid in the said act of parliament for the protection of the said streets called V. lane S. row C. street and Old B. street from any thoroughfare for carriages and will therefore be contrary to the true intent and meaning and spirit of the said act of parliament. To THE END therefore that his Royal Highness the Duke of Y. may upon his honor and according to the best of his knowledge remembrance information and belief full true and perfect answer make to all and singular the matters aforesaid as fully and particularly as if the same were here again repeated and he thereunto distinctly interrogated, and more especially that he may answer and set forth Whether, &c. [*interrogate to the statements.*]

And that the said defendant may answer the premises; and that the said defendant his agents servants and workmen may be restrained by the order and injunction of this honorable court from proceeding to make and open any public street or way from the said lands called M. gardens into the said street called V. lane over the said common and public footway; and that the said defendant may be directed to replace the flag-stones of the said footway so as aforesaid removed by him or by his order, and to put the same footway into the same state and condition as the same was in before his obstruction thereof as aforesaid. [*And for further relief.*]

a particular clause in an act of parliament and the intention of such clause.

Plan formed by the defendant for making a carriage way over the public footway, part of which has been broken up;

That such new way will obstruct the footway and will be a common nuisance. The intended line of such new way.

J. L.

*\*CLXVII. Information to restrain the obstructing ana breaking up a public road and highway, for the purpose of making vaults in front of certain houses to be erected on ground fronting the road. The defendants claiming an authority under commissioners appointed by certain acts of parliament.*

States that there is situate lying and being within the parish of B. in the county of M. a certain street or road commonly called or known by the name of —, which is bounded on the east by certain dwelling-houses and the arrears thereto belonging, and on the west side thereof by certain land or ground now belonging to the Duke of B., from which the same was formerly separated by a brick wall which hath within these few weeks past been pulled down and demolished, and which street and public highway at the south end thereof terminated with a certain street and public highway called —, and at the north end thereof terminated at —, and communicates with a certain piece or parcel of land which hath lately been laid out as a street and public king's highway which is called —, which street or road is called or known by the name of —, and now is and hath for upwards of — years last past been a common and public king's highway for all his Majesty's subjects whatsoever, and the same hath been from time to time for upwards of — years last past repaired at the expenses of the inhabitants of the houses adjoining the said street and king's highway, and of the inhabitants of the said parish of —, by means of rates imposed and by virtue of certain acts of parliament made and passed in the — years of his present Majesty's reign or some or one of them.

That all his Majesty's subjects ought now and at all times hereafter to have the free use of the said street and public king's highway, for themselves their carriages and horses free from all let interruption and hindrance whatsoever; but that the said Duke of B. hath lately entered into some contract with J. B. for letting the ground lying and being on the west side of the said street or public highway and adjoining thereto, and the said defendant J. B. hath agreed with the said defendant the Duke of B. to erect certain houses on the said piece or parcel of ground fronting the said street or king's highway on the west side thereof and the said defendant J. B. threatens and intends shortly to take up part of the pavement in the said street or public king's highway on the west side thereof, and to make and dig large holes therein for the purpose of erecting vaults therein upon and under the said street or public king's highway to be used with the said dwelling-houses, and to pave or cover the said street above such vaults when erected with broad flags or stones such as are used for paving of passages for foot passengers only; and that by the digging of such holes and building of such vaults the said street and king's highway must necessarily and unavoidably be much obstructed and rendered much less convenient for his Majesty's subjects, who will be deprived of so much of the \*said street and king's highway as shall be so dug up or as shall be used for the laying of earth and rubbish dug thereout until the said vaults

shall be completed; and that when the same are completed, said street and public king's highway will at all times after be liable to be obstructed by the falling in of such vaults, or when the same stand in need of repairs that the digging and making of such vaults and the continuance thereof will be to the public damage and nuisance of all his Majesty's subjects, and particularly of the said relators and all other persons residing near the said street and public king's highway; and that if the said vaults are covered over with the said flags or broad stones as intended, so much of the said street or king's highway as is covered with such flags or broad stones will become unfit to be used for horses and carriages; and that his Majesty's subjects, and particularly the said relators, will not have the use and enjoyment of said street or king's highway in so beneficial a manner as they have hitherto been accustomed to have.

That the laying of such flags or stones will also be to the public injury and nuisance of all his Majesty's subjects, particularly of such of them as aforesaid.

That such intended acts of the said defendant J. B. if carried into execution, will be to the wrong and injury of all his Majesty's subjects, and will be a public nuisance. And that the said relators and divers others of his Majesty's subjects have frequently applied to the said J. B. and requested him not to proceed to dig up the said street or public king's highway.

*Charge* that the said defendants refuse to comply with such request, and threaten and intend to dig up the said street and public king's highway in manner aforesaid, and to erect vaults under the same, and to pave or cover the street or above the same as hereinbefore mentioned.

*Pretence* that the said piece of ground called — is not a public king's highway.

*Charge the contrary*, and that the said piece of ground was upwards of — years set apart for and hath ever since been and still is used as a public king's highway, and hath since the — year of the reign of his present Majesty been repaired at the public expense of the said parish of B. in manner hereinbefore mentioned, and that the same thereof is and ought to be taken to be to all intents and purposes a common and public king's highway.

*Pretence* that the soil of the said piece or parcel of ground belongs to the said defendant the Duke of B. and that he hath a right to dig and make vaults under same, and pave and lay the surface of such street as he shall be advised.

*Charge the contrary*, and that if the said defendant Duke of B. is owner of the said piece or parcel of ground, yet the same being a public highway, neither he nor any person claiming by from or under him, hath any right to dig the soil thereof, so as to obstruct hinder or interrupt the said way; and that in order to make the said vaults the said defendant J. B. intends to dig holes from the surface of said street or highway, which may obstruct the same, or make \*the same less commodious or convenient for the passage of horses or carriages.

*Pretence* that they have been duly authorized and empowered by

the commissioners named and appointed by the said acts of —, or some or one of them for the purposes therein mentioned or a sufficient number thereof, to make such vaults, and to pave such part of the said street as they intend to pave with such flags or broad stones as aforesaid.

*Charge* and insist that in case the said commissioners have made any order by which they have pretended to give authority to the said defendants or either of them so to do, yet that the said commissioners had no power or authority to authorize the said defendants so to do, and especially to make vaults under the said street, or to dig holes from the surface of the said street to enable them so to do. To THE END therefore that &c. [*vide antea*, p. 459, and form VI. p. 5, and *interrogate to the statements and charges.*]

And that the said defendants their servants and workmen may be restrained by the injunction of this honorable court from proceeding to dig up any part of the said public street called —, and that if they have already dug up any part thereof, that they may be decreed to replace the same in the same state and condition as it was in before they dug up the same. [*And for further relief.*]

CLXVIII. *Information for the purpose of carrying the trusts of a will into execution (which was made before the 9th Geo. 2, cap. 36,) whereby lands were devised for the purpose of building a new College in the town and University of C., and supporting and endowing the same.*

States the will of Sir G. D. devising freehold and copyhold estates and also leaseholds after the death and failure of issue of T. G. D. and other persons, unto certain trustees to found a College in C. to be called D. College.

That the testator died without revoking his will and without issue, leaving T. G. D. his heir at law, who proved the will and entered into possession of the testator's estates.

That T. G. D. survived the remainder-men, and that all of them died without issue, whereby the rents and profits of all the said testator's freehold copyhold and leasehold estates became applicable for the purchase of lands to build a new College in the said town and University of C., and for the erection of such College, and for the supporting and endowing the same according to the directions of the said will.

That all the trustees died in the testator's life-time, and that upon the testator's decease all his said freehold and copyhold estates and such of the said leasehold estates as were held for lives descended to the said T. G. D. as his heir at law, but subject in equity to the trusts in the said testator's will mentioned, and that on the testator's death all his leasehold estates which were held for years absolute or

[ \*466 ]

\*for years determinable on lives vested in the said T. G. D. as his executor.

That T. G. D. by his will gave to his wife defendant M. D. all his real and personal estate chargeable with the payment of several annuities and legacies, and appointed her executrix.

That T. G. D. left the defendant E. N. his heir at law, and that the relators are advised that if T. G. D. was of sound and disposing mind memory, &c. at the time of making his will, and if the same was duly executed, &c. then the aforesaid estates became and then were legally vested in M. D. the widow, but that if T. G. D. was not of sound mind, &c. or the will not duly executed, &c. the relators are advised that his freehold and copyhold estates and the estates held by leases for lives were then legally vested in the said E. N., and that the estates held by leases for years absolute or years determinable on lives were legally vested in M. D. as executrix of T. G. D.

That M. D. had since the death of her husband entered on all the testator's freehold copyhold and leasehold estates, and was then in possession thereof, and had also got into her possession all the deeds evidences and writings relating thereto.

Applications made to her to discover the particulars of all the freehold copyhold and leasehold estates of which Sir G. D. was seised at the time of making his will and at his death, and to account with the relators for all the rents and profits which had accrued due since the death of T. G. D. and received by the widow or for her use in order that the same might be applied according to the directions of the will of Sir G. D. and to concur with the relators in appointing some person or persons to receive the rents and profits of the said estates so that the future income thereof might be secured, and might with the money so due from her be applied when the same should be sufficient to purchase ground to build a college on according to the said will, and also to deliver all deeds and writings belonging to the said estates to the relators, and also requested her and E. N. as the heir at law of T. G. D. to convey and assign all the said estates to trustees for the benefit of the said college when erected. And the relators well hoped, &c. But that the said M. D. and E. N. *pretend*

That Sir G. D. was not of sound mind, &c. or that his said will was not duly executed, &c. and therefore they insist that on his death all his real estates descended to T. G. D. as his heir at law, and the widow claims the same under the aforesaid will of T. G. D. insisting that his said will was duly executed, &c. and E. N. claims the same insisting that T. G. D.'s will was not duly executed, &c. and therefore that the same descended to him as heir at law.

*Charge the contrary* and as evidence of the insanity of testator Sir G. D. at the time of making his aforesaid will, *charge* that T. G. D. soon after said Sir G. D.'s death duly proved his said will as his executor, and in many respects acted as such.

But then they pretend and insist that by virtue of a statute made in the 9th year of the reign of his late Majesty King George the Second, intituled, "An act to restrain the disposition of lands whereby the same become unalienable," whereby it was enacted \*that after the — day of — no manors lands tenements rents advowsons or other hereditaments should be given, &c. the said devise of the said estates for the purpose of building and endowing

the said college was void, and therefore that M. D. as devisee and executrix as aforesaid or E. N. as heir at law was entitled to all the said estates.

Insist that the will of Sir G. D. having been made long before the passing of the said act of parliament, the charitable purposes thereby intended and directed ought and might take effect notwithstanding the said act of parliament, and although the said Sir G. D. did not die until after the passing and commencement of the said act; and therefore that the rents and profits of all his said real and leasehold estates accrued due since the death of T. G. D. ought to be accounted for and applied to the charitable purposes in the will mentioned, and that a receiver or receivers ought to be appointed of the said real and leasehold estates, and that the several deeds and writings relating thereto ought to be deposited in this court or otherwise preserved and taken care of, and that the said estates ought to be conveyed and assigned to proper persons in trust for the said charitable purposes; but that the said defendants refuse to comply with such requests to them respectively made as aforesaid, and that the said M. D. or her agents by her directions have refused to give the relators or their agents any information of the particulars of said estates, and that well knowing that such particulars would appear by said deeds she has refused to discover the same although often requested thereto.

That M. D. at other times pretends that most of the estates which the said T. G. D. was in possession of at his death never were the estates of Sir G. D., or were not purchased or acquired by him until after the making of his said will, and therefore that the same did not pass by the said will. *Charge* the contrary of such pretences to be the truth.

That A. B. (another defendant an annuitant) pretends that the testator Sir G. D. made a codicil to his will whereby he gave unto her an annuity of £—— during her life, and that he thereby charged all his lands with payment of the same, and *pretends* that such codicil was made by him whilst of sound mind, &c. and that the same was duly executed, &c. and that she is therefore entitled to the said annuity of £—— thereby given to her.

*Charge* that Sir G. D. made no such codicil, or that he was not of sound mind, &c. or that the same was not duly executed, &c. but that if such codicil was duly executed, &c. that the relators are advised that the said annuity ought to be paid out of the personal estates of Sir G. D., and ought only to be paid out of his real estate in case of a deficiency of his personal estate for payment thereof.

*Charge* that T. G. D. as executor of Sir G. D. possessed all the assets belonging to Sir G. D. at his death much more than sufficient to satisfy his debts and legacies and the said annuity, and that M. D. as executrix of T. G. D. had possessed all the personal estate belonging to him at his death more than sufficient to answer and make good the personal estate of Sir G. D. possessed by T. G. D., \*and therefore the relators are advised and insist that a sufficient part of the personal estate of T. G. D. ought to be set apart for securing the said annuity, so that the said testator's real and leasehold estates might be discharged therefrom; but the said A. B. insists on



a right to the said annuity out of the real and leasehold estates in preference to the said charity, and that M. D. refuses to set apart a fund for securing the said annuity.

That the defendants — Archbishop of Canterbury, — Archbishop of York, — Master of St. J—— College, and — the Master of C. H., (*who were appointed by the will of Sir G. D. to regulate the college*) decline to do such acts as are proper for founding and establishing a new college in the said university, according to the directions in the said testator Sir G. D.'s will.

And that the said Sir G. D.'s will may be established, and the trusts thereof performed and carried into execution, and that all proper directions may be given for that purpose, and that an account may be taken of all moneys received by the said M. D. in respect of the rents and profits of the said Sir G. D.'s freehold copyhold and leasehold estates become due since the death of the said T. G. D.; that she may pay the money due on such account as the court shall direct, in order that the same may be applied for answering the purposes of the said will; and that one or more proper person or persons may be appointed by the court to receive the rents and profits of all the said freehold copyhold and leasehold estates in order that the same may be secured and applied for the purposes of the said will; and that the said freehold copyhold and leasehold estates may be conveyed surrendered and assigned as the court shall direct, for the benefit of the said charity, and that all proper parties may join therein, and that all deeds and writings relating to the title of said estates may be brought into court or otherwise preserved for the benefit of the said charity; and that if it should appear that Sir G. D. did duly make and execute such codicil as hereinbefore mentioned to be alleged by A. B., then that a competent part of the personal estate of Sir G. D. may be set apart for securing the payment of the said annuity of £—— so that the said freehold copyhold and leasehold estates may not be subject thereto. [*And for further relief.*](2)

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**\*\*CLXIX.** *Information praying the direction of the court as to the application of the surplus rents of an estate devised unto trustees in favor of a college for the benefit of two members thereof; the surplus rents being by the will directed to be laid out in the purchase of advowsons, and the college having thereout purchased as many advowsons as they were capable of holding.*(3) [ \*469 ]

To, &c.

Informing sheweth unto your lordship R. P. A. esq. his Majesty's Attorney-General, at the relation of F. W. of, &c. That J. R. heretofore of, &c. but long since deceased, was in his life-time and at the Testator seized of a certain

(2) See form No. CLXII. antea, p. 444.

(3) By the 45 Geo. 3, c. 101, so much of the 9 Geo. 2, c. 36, as restrained colleges from purchasing or holding advowsons, was repealed.

manor and  
other lands ;

His will devis-  
ing the same  
to trustees,

Upon trust to  
pay 600*l.* to  
two persons,  
masters of  
arts, to be  
chosen by, &c.

for their main-  
tenance for ten  
years, one-  
half of which  
they were to  
travel abroad ;

Vacancies to  
be filled up  
from time to  
time ;

The surplus  
rents to be ap-  
plied in pur-  
chasing ad-  
vowsons for  
the members  
of the college ;

Devise of all  
his residuary  
real and per-  
sonal estate to  
his executors.

Direction to  
convey the  
manor, &c. to  
the college,

[ \*470 ]

In trust for  
the uses of his  
will.

Direction for  
maintaining  
the number of  
trustees.

Death of the  
testator.

Information  
filed to estab-  
lish the will ;

time of his decease seised of or otherwise well entitled in fee-simple of or to the manor of, &c. and also of or to divers lands and hereditaments in the said county of Y. And the said J. R. being so seised or entitled as aforesaid, did when he was of sound and disposing mind memory and understanding, duly make and publish his last will and testament in writing bearing date the — day of September —, and thereby gave and devised the said manor of L. and all other his lands and hereditaments in the said county of Y. unto his executors thereinafter named and their heirs, Upon trust to pay thereout yearly 600*l.* to two persons to be chosen out of the University of O. when they were masters of arts and entered on the physick line by the Archbishop of Canterbury, Lord Chancellor, or Keeper of the Great Seal, the Chancellor of the University of O. the Bishop of L. the Bishop of W. the two principal Secretaries of State, the Lord Chief Justices of the Courts of K. B. and C. P. and Master of the Rolls, all for the time being, or by the major part of them, for the maintenance of the said two persons for the space of ten years and no longer, the half of which at least they were to travel in parts beyond the sea for their better improvement, and in case of their decease or after the expiration of the said ten years for the maintenance of two other persons to be chosen in like manner and for the same term of years, and so from time to time for ever ; and if any vacancy should happen of one or both that the places should be filled up in the space of six months, and the yearly overplus of the rents and profits of his said Y. estate he willed to be paid for ever to U. college in the said city of O. for the buying of perpetual advowsons for the members of the said college ; and he gave and devised all his real and personal estate whatsoever, charged with and subject to the payment of — bequests and legacies in his said will mentioned, to the Right Honorable W. B. esq. then principal Secretary of State, Sir G. B. bart. T. S. of, &c. and A. K. of, &c. gent. and to their heirs executors and administrators for ever, and appointed them executors of his said will. And he willed and desired if it might be done by law that his said Y. estate should be conveyed and settled by his executors on the Master and Fellows of the U. college for ever, In trust for and for part performance of the uses and trusts in his said will declared and hereinbefore mentioned of and concerning the same estate. And he willed that his executors in case of the decease of any one or more of them should join two or more persons of good repute with the survivors of them in their trust by such conveyances as should be advised, and so from time to time if need should be, that his will might be the better and more surely performed. As by the said will duly executed in the presence of and attested by three witnesses, relation being thereunto had will more full appear. And his Majesty's Attorney General at the relation aforesaid further sheweth that the said testators J. R. departed this life some time after the making and publishing of the said will without altering or revoking the same ; and that in or about Easter Term in the year — Sir E. N. knt. his Majesty's then Attorney-General at the relation of the Chancellor Masters and Scholars of the University of O. and Master and Fellows of U. college in O. aforesaid and others, exhibited his information

in this honorable court against the said W. B. Sir G. B. T. S. and A. K. as executors of the said J. R. as aforesaid and others, thereby praying (amongst other things) to have the trusts of the said will carried into execution, and to establish the said gift and devise contained in the said will of the said Y. estate, and to have the benefit thereof; and the said cause came on to be heard on the 30th day of April in the year 1716 before the right honorable W. Lord C. then Lord High Chancellor of Great Britain, when it was (among other things) ordered and decreed that it should be referred to Sir T. G. knt. then one of the Masters of the court to see that a proper license was obtained to enable the relators the Master and Fellows of U. college aforesaid to purchase in mortmain, and when such license should be obtained it was ordered and declared that the inheritance of the estate of the said J. R. in the county of Y. should be vested in the Master and Fellows by such proper conveyances as the said Master should direct, subject to the trust of the perpetual performance of the said will in respect to the said estate, which for that time and from time to time they were to let at the best improved rent they could get for the same, and not to take any fine whereby to lessen the annual value thereof. And his Majesty's Attorney-General at the relation aforesaid further sheweth that upon the petition of the said Master and Fellows of U. college aforesaid, his late Majesty King George by his letters patent bearing date — granted unto the said Master and Fellows of U. college aforesaid and their successors his special license full power and lawful and absolute authority to take hold and receive in mortmain to them and their successors for ever the lands and hereditaments so devised by the said J. R., In trust for them as aforesaid, and also to purchase acquire hold and receive in mortmain to them and their successors for ever or otherwise to or to the use of or in trust for them or their successors from any person or persons bodies politic or corporate their heirs and successors respectively, so much other lands tenements rents or hereditaments within that parts of Great Britain called England or the dominion of Wales as might amount to the value of 1000*l.* per annum above all charges and reprises including the said devised lands and hereditaments, and \*such advowsons as might be bought by them by the clear profits of the said lands. As by the said letters patent when produced will more fully appear. And his Majesty's Attorney-General at the relation aforesaid further sheweth that by indentures of lease and release bearing date the 20th and 21st days of April —, and made between the Right Honorable E. Earl of O. and Earl M. the Right Honorable C. N. S. esquire, commonly called Lord C. N. S. of, &c. Sir W. B. of, &c. Sir W. W. of, &c. bart. and E. S. of, &c. esquire of the one part, and the Master and Fellows of U. college in the University of O. otherwise called the Master and Fellows of the college of the Great Hall of the University of O. of the other part, reciting (amongst other things) to the effect hereinbefore set forth; and further reciting that the said W. B. one of the executors named in the said will dying in or about the month of February — W. B. of, &c. esquire his son and the said Earl of O. and Earl M. (then E. H. esquire) were by the surviving executors named in the said will joined

Decree made directing (*inter alia*) a reference to the Master to see that a proper license was obtained to enable the college to purchase in mortmain, and when obtained, a conveyance to be made to the college, subject to the trusts of the will, with power to let the estates at rack rent.

License granted by the Crown to the college to hold the estate devised and to purchase other hereditaments not exceeding in value 1000*l.* per annum.

[ \*471 ]

Conveyance of the devised estate executed to the college.

with them in the said trust. And also reciting that the said W. B. the son of Sir G. B. and the said T. S. who was before his death called T. B. and the said A. K. being all then deceased, the said Lord C. N. S. Sir W. B. Sir W. W. and E. S. by virtue and in pursuance of the said will by several deeds-poll duly executed had been nominated and appointed in their room to be joined with the said E. Earl of O. and Earl M. in the execution and performance of the said will, and that the said estate of the said J. R. had been by proper conveyances vested in them and their heirs, It was witnessed that the said E. Earl of O. and Earl M. Lord C. N. S., &c. &c. as well in consideration of the sum of 5s. &c. and also in performance of the trust in them reposed and in pursuance of the said will of the said J. R. and of the said decree conveyed unto the said Master and Fellows of U. college aforesaid otherwise called the Master and Fellows of the college of the Great Hall in the University of O. aforesaid, All that the manor or lordship of, &c. with the rights members and appurtenances thereof in the said county of Y., and divers messuages lands tenements and hereditaments therein mentioned with their and every of their appurtenances conveyed by T. R. therein named to the said J. R. deceased and his heirs as therein mentioned, To hold the same unto and to the use of the said Master and Fellows of U. college otherwise called the Master and Fellows of the college of the Great Hall of the University of O. and their successors for ever, Upon the trusts and to the intents and purposes in the said will of the said J. R. deceased and the said decree mentioned expressed and declared of and concerning the same. As by the said indentures of lease and release duly executed by the several parties thereto, reference being thereunto had when the same shall be produced to this honorable court will more fully appear. And his Majesty's Attorney-General at the relation aforesaid further sheweth that the surplus of the rents of the said premises after payment of the said 600*l.* per annum to the two travelling Fellows, was received by the said Master and Fellows who laid out the same in the purchase of as many advowsons as they are capable of holding under the restrictions of the act of the 9th of his late Majesty King George the

\*Second, intituled, "An act to restrain the disposition of lands whereby the same become unalienable." And his Majesty's Attorney-General at the relation aforesaid further sheweth that the said estate of the said J. R. devised as aforesaid, was originally very little more than sufficient to pay the travelling Fellows their said salaries, but the same hath of late years been very considerably improved in value, and the said Master and Fellows of the said college having many years ago purchased with the surplus produce thereof, as many advowsons as the said college are capable of holding, there is now a very large surplus of the rents of the said estate in the hands of the said Master and Fellows which ought to be applied for charitable purposes as nearly as may be according to the intentions of the said J. R. deceased expressed in his said will concerning the surplus produce of his said Y. estate. And the said Master and Fellows allege that they have so applied the same but R. G. of, &c. esquire alleges that he is the heir at law of the said J. R. deceased, and as such is entitled to the

The surplus rents after payment of the 600*l.* per annum laid out in the purchase of as many advowsons as the college was capable of holding under the 9 Geo. 2, c. 36.

[ \*472 ]

That the estate being originally little more than sufficient to pay the 600*l.* per annum, has much improved in value; that there is now a large surplus which ought to be applied for

surplus of the rents of the said estates after payment of the said salaries to such two travelling Fellows as aforesaid in regard such surplus cannot now by law be applied in the purchase of advowsons according to the said will of the said J. R. To THE END therefore that the said Master and Fellows of the U. college or the college of the Great Hall in the University of O. aforesaid, and the said R. G. may full true and perfect answer make to all and singular the several matters aforesaid as fully, &c. [see form VI. p. 5, and interrogate to the statements.]

charitable purposes; but to which the testator's heir at law claims to be entitled.

And that an account may be taken under the direction of this honorable court of the rents of the said estate and of the application thereof by the said Master and Fellows; and that the surplus of such rents after answering the purposes expressly directed by the said testator's will so far as the same are now capable of being performed, may be employed for the benefit of the said college in such manner as this honorable court shall think fit. May it please, &c. [see form No. 1, p. 6.]

Prayer.

\*CLXX. *Information at the relation of certain freeholders and inhabitants of a parish, forming a society called "The Twenty-four," by whom the affairs of the parish were managed, to establish a bequest of stock for the benefit of the poor of a certain district within the same parish, praying also to have the stock transferred into the Accountant-General's name.*

In Chancery.

To &c.

Informing sheweth unto your lordship Sir A. M. knight his Majesty's Attorney-General, by and at the relation of E. C. R. W. G. &c. &c. all housekeepers and inhabitants having freehold estates within the parish of T. in the county of N., That there hath been \*from time immemorial within the said parish a certain society consisting of twenty-four persons being housekeepers and inhabitants, and having freehold estates within the said parish, and which said society hath always been and still is called or known by the name or description of "The Twenty-four;" twelve of which twenty-four have from time immemorial been elected or chosen out of the principal inhabitants having freehold estates within the township or district of N. S. within the said parish, and the remaining twelve out of the principal inhabitants having freehold estates within the rest of the said parish commonly called the country part of the said parish, the said twenty-four persons having constantly had the direction and management of the business and concerns of the said parish. And the said Attorney-General at the relation aforesaid also informeth your lordship that upon the death of any one or more of the said society, or in case of his or their selling or disposing of his or their freehold or freeholds within the said parish, the survivors and others

That from [ \*473 ] time immemorial a society of twenty-four housekeepers, freeholders and inhabitants has existed within the parish, and called, "The Twenty-four." The manner in which the members have been chosen.

That the relators are the surviving and present members.

Will of M. R. bequeathing to her executors £466 East India Annuities, In trust to permit the society to receive the dividends to be applied for the benefit of the poor of a certain district or within the parish.

[ \*474 ]

Death of the testatrix without revoking her will.

The same proved by the executors.

Testatrix possessed of large personal estate, particularly of East India Annuities to a larger amount than the legacy; And that the executors pos-

of the said society have been from time to time whereof the memory of man is not to the contrary, used and accustomed to elect and choose, and have accordingly elected and chosen on the Easter Monday following such event, some other proper person or persons to be a member or members of the said society in the room or stead of the person or persons so dying or disposing of his or their freehold as aforesaid. And the said Attorney-General at the relation aforesaid further informeth your lordship that the relators and H. H. late of W. in the county of N. esquire, were the persons who were last elected or chosen as members which composed the said society; and the said H. H. having lately departed this life, your relators are the surviving and present members of the said society. And the said Attorney-General at the relation aforesaid further informeth your lordship that M. R. late of, &c. widow, deceased, in her life-time duly made and published her last will and testament in writing bearing date on or about the — day of April —, and thereby amongst other things appointing R. J. and P. P. of, &c. esq. executors thereof, she gave and bequeathed unto her said executors in the words and figures or to the purport and effect following (that is to say); “I give devise and bequeath unto the said P. P. and R. J. and the survivor of them and the executors and administrators of such survivor the sum of £466 East India Annuities, part of which is now standing in my name in the books of that company, In trust that they my said trustees and the survivor of them and the executors and administrators of such survivor, do and shall pay to authorize and permit and suffer the housekeepers and inhabitants of the township of N. S. commonly called “The Twenty-four,” for the time being for ever, to receive the dividends interest and produce of the said sum of £466 East India Annuities as and when the same shall become due and payable, In trust to be by them or any five or more of them paid applied and disposed of from time to time for ever, unto and amongst such of the poor of the said township as they shall think proper.” As in and by such will or the probate thereof, relation being thereunto had will more fully appear. And the said Attorney-General at the relation aforesaid further informeth your lordship that the said testatrix \*M. R. departed this life on or about the — day of April in the year of our lord —, without revoking or altering her said will, and upon or soon after her death the said B. J. and P. P. duly proved the said will in the proper Ecclesiastical Court, and undertook the executorship thereof. And the said Attorney-General at the relation aforesaid further informeth your lordship that the said testatrix M. R. was at the time of her death possessed of or entitled unto a considerable personal estate consisting of many valuable particulars, and particularly she was possessed of or entitled unto a considerable sum of money in East India Annuities to a much larger amount than the said legacy; and upon or shortly after her decease the said R. J. and P. P. by virtue of the said will or the probate thereof, possessed themselves of all the said personal estate and effects, and procured the said East India Annuities to be transferred into their names. And the said Attorney-General at the relation aforesaid further informeth your lordship that the personal estate

and effects late of or belonging to the said testatrix, and possessed by her said executors since her decease, were more than sufficient (exclusive of the said East India Annuities) for the payment of all her debts funeral expenses and legacies, all which debts funeral expenses and legacies, save the aforesaid charitable legacy, have been long since fully paid and discharged; and the said East India Annuities now remain standing in the names of the said R. J. and P. P. to answer and satisfy the aforesaid legacy. And the said Attorney-General at the relation aforesaid further informeth your lordship that your relators being the persons meant and intended by the description in the said testatrix's will mentioned, of the housekeepers and inhabitants of the township of N. S. commonly called "The Twenty-four," hoped that the said R. J. and P. P. would have paid and applied the interest or dividends of the said East India Annuities for the benefit of such person or persons as are entitled thereto by virtue of the said testatrix's will. BUT NOW SO IT IS may it please your lordship the said R. J. and P. P. decline to pay the interest or dividends of the said sum of £466 East India Annuities unto your relators to be applied according to the direction of the said testatrix's will, alleging that they cannot do so with safety to themselves without the direction of this honorable court for their indemnity therein. And the said Attorney-General charges that the charitable intentions of the said testatrix are in danger of being frustrated in process of time, when after the deaths of the said defendants it may be difficult to find out who are or may be the personal representatives of the said testatrix, in order to obtain a representative to her, and the obtaining or procuring a representative to her will be attended with considerable expense, and therefore the said Attorney-General and the said relators charge that the said sum of money in annuities aforesaid ought to be transferred into the name of the Accountant-General of this honorable court upon the trust and for the purposes aforesaid. TO THE END therefore that the said R. J. and P. P. may upon their several and respective corporal oaths, &c., &c., and more especially that they may in manner aforesaid answer and set forth whether, &c.

\*And that the aforesaid charity may be established; and that the said defendants R. J. and P. P. may be decreed to transfer the before-mentioned sum of £466 in East India Annuities into the name of the Accountant-General of this honorable court, upon the trust and for the purpose mentioned and expressed in the said testatrix's said will concerning the same, and that the trust thereof may be declared accordingly. And that the interest or dividends which have become due thereon since the death of the said testatrix, and which may hereafter become due therein, may from time to time forever hereafter be paid to the relators and their successors the twenty-four of the housekeepers and inhabitants of the said township of N. S. to be applied in the manner by the said testatrix's will directed, and that such further and other directions may be given for the establishment and maintenance of the said charity as to your lordship may seem meet and this case may require. May it please, &c. [*see form No. 1, p. 6.*]

essed themselves of all such personal estate.

That the personal estate, exclusive of the East India Annuities, was more than sufficient to pay all the debts and legacies; all which except the charitable legacy have been since paid;

And the East India Annuities remain standing in the names of the executors to answer th legacy.

That the executors decline to pay the dividends of the legacy, without the direction and indemnity of the Court.

Charge that the intentions of the testatrix are liable to be frustrated by failure of her personal representatives;

[\*475]

and that the legacy ought to be transferred into the name of the Accountant-General.

Prayer.

CLXXI. *Prayer of an information filed for the purpose of establishing a charity, and the right of certain persons to nominate the objects thereof, and also for the appointment of new trustees, and praying that the defendants may convey a rent-charge to the new trustees, and deliver up all deeds and writings.*

And that the said charity and the right of the perpetual curate churchwardens constables and overseers of the said parish to nominate the objects thereof may be established; and that an account may be taken of all sums of money received by or by the order or for the use of them the said defendants or any or either of them for or in respect of the said yearly rent-charge, and that what shall be found due upon the taking of such account may be applied and disposed in such manner as this honorable court shall direct, and that the said defendants — may be removed from being trustees of said charity, and that new trustees thereof may be appointed by and under the direction and decree of this honorable court, and that the said defendants may convey over the said yearly rent-charge to such new trustees upon the trusts aforesaid, and deliver over unto them all deeds papers and writings in their respective custody or power relating thereto. [*And for further relief.*]

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[ \*476 ] \*\*CLXXII. *Prayer of an information and bill to establish the bequest of a moiety of a testator's residuary personal estate for the benefit of a charity; and in order thereto, to have an account taken of the testator's personal estate, debts, &c. and the clear residuary estate ascertained, and that one moiety thereof may be invested in the funds, and the dividends thereof paid to the relators and plaintiffs, to be distributed and applied by them for the benefit of the objects of the charity.*

And that the additional legacy given or provided by the said testator's will of a moiety of the interest of the residue and clear surplus of the said testator's personal estate and effects for the benefit of — may be established, and that the said charity may have the benefit thereof, and that all proper and necessary directions may be given for that purpose. And that your orators may be declared to be entitled to the distribution thereof for the benefit of the said charity; and in order thereto, that an account may be taken of the personal estate and effects of the said testator J. S. and of the produce interest or income thereof possessed or received by or by the order or for the use of the said defendants T. R. J. B. and E. M. and the said defendants the Master Wardens and Commonalty of the art or mystery of —, and also of the said defendants the Master Wardens Brethren and Sisters of the guild or fraternity of —, and every or any of them; and also an account of the said testator's debts



funeral expenses and the several legacies given and bequeathed by his said will and codicils; And that the said testator's personal estate and effects and the produce or money arising by sale thereof may, if necessary, be applied in payment of such debts and legacies (if any remain unpaid) in a course of administration; and that the residue and clear surplus thereof may be ascertained, and that such part of the said residue as is not or hath not already been invested or placed out at interest in the funds or upon government securities may be so invested or placed out, upon the trusts and according to the directions contained in the said testator's will and first codicil, and that one moiety or equal half part of the interest or dividends of such residue and clear surplus already arisen or become due since the death of the said testator may be paid unto your orators for the charitable purposes mentioned and expressed in the said testator's will, or in such other manner for the benefit of the aforesaid charity as this honorable court shall direct; and that the future interest or dividends of one equal moiety of the whole of such residue may for ever hereafter from time to time as the same shall become due be paid to your orators to be distributed or applied by them for the benefit of the said charity for the relief of —, or distributed or applied in such other manner as this honorable court shall direct for the benefit of the said charity. And that your orators may have such further or other relief in the premises, or that such further and other directions may be given for the benefit of the said charity as the nature of the case may require, and to your lordship may seem meet. May it please, &c.

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**\*\*CLXXIII.** *Statement in and prayer of an information and bill filed against the Skinners' Company(4) for an account of the charity estates vested in them for the support of the free grammar school at Tonbridge; praying that it may be declared that the increased rents ought to be applied for the support of the school, and that the company may account for the same accordingly, and for a reference to the Master to apportion the rents amongst the different parties entitled under the testator's will, to settle a scheme for the application of the rents of the estates, and the revenues of the school. The Clerk to the company being made a defendant for the purposes of discovery.* [ \*477 ]

That ever since the date of the said last-mentioned act the Master Wardens and Commonalty of the mystery of the Skinners of L. have been and they still are as such trustees as aforesaid in possession of all the messuages lands tenements hereditaments and premises so conveyed and devised to them as aforesaid in trust for the maintenance and support of the said school so founded at T. aforesaid, subject nevertheless to the application of some part of the rents and profits

That the Skinners' Company are in the possession of the estates conveyed and devised to them for the support of the

(4) See *The Attorney-General v. The Skinners' Company*, 5 Madd. 173.

school, subject to the application of part of the rents for the support of poor alms-people of the foundation of the testator.

That the school is still continued and the school-master and usher appointed by the company.

That the rents have greatly increased.

That the company are in possession of the whole thereof, and thereout support the school, and pay the master's and usher's salaries, and the surplus is appropriated by the company to their own use.

[ \*478 ]

That the clerk to the company usually receives the rents of the estates, and settles the accounts of the charity, and has in his possession all the deeds, &c.

Applications made to the company to account for the rents of the trust estates.

Prayer.

of the premises devised by the said testator's will to the maintenance of the alms-people therein mentioned, and the said school hath been ever since and still is continued at T. aforesaid, and there have been and now are a school-master and usher in the said school, duly appointed by the said Skinners' Company.

That the rents and profits of the said estates and premises so conveyed and devised to the said Master Wardens and Commonalty of the mystery of the Skinners of L. for the purposes aforesaid have very greatly increased, and that the same amount now to several thousand pounds per annum, and that the Master Wardens and Commonalty of the mystery of the Skinners of L. have received and do receive the whole of such rents and profits, and that they have thereout kept and do keep the said school and premises in repair, and have paid and do pay thereout the sum of 20*l.* annually to the master of the said school, and the further sum of 8*l.* annually to the usher of the said school, and they have usually for several years past by a vote of the said Company presented the master and usher of said school with the sum of 42*l.* annually between them, and making the whole receipts of the master and usher from the said estates amount only to the sum of 70*l.* per annum, and the whole surplus of the said rents and profits amounting to several thousand pounds per annum, the said Master Wardens and Commonalty of the mystery of the Skinners of L. have annually appropriated and do now appropriate to their own use.

That F. G. of — is now the clerk or secretary of the said Company, and is in the habit of receiving on behalf of the said Company the rents and profits of the said Company's estates, and of the said charity estates, and of settling the accounts respecting \*the same and he is intrusted with or keeps in his possession all the deeds books and papers of the said Company, and he is well acquainted with all the particulars of the foundation and endowments of the said school, and of the estates belonging to the same and the rents and profits thereof, and of all deeds evidences and writings relating thereto, and in particular the deed made by H. F. in the said act of parliament mentioned.

That applications have been frequently made to the Master Wardens and Commonalty of the mystery of the Skinners of L. to account for the rents and profits of the said trust estates and premises received by them as aforesaid, and apply the same to the purposes of the trusts upon which the said estates are vested in them, and particularly to apply a competent part of the revenues of the said charity to the maintenance and support of the master and usher of the said school so founded by the said Sir A. J. as aforesaid.

And that an account may be taken by and under the directions and decree of this court of all and singular the messuages lands tenements hereditaments and premises conveyed or devised to the defendants the Master Wardens and Commonalty of the mystery of the Skinners of L. by the said Sir A. J. or his trustees by the conveyance and will hereinbefore mentioned, and that it may be declared

that all the rents issues and profits of the messuages lands tenements hereditaments and premises vested in the said corporation by virtue of the said conveyance are applicable and ought to be applied to the support of the said school so founded by the said Sir A. J. at T. as aforesaid, and to the maintenance and support of the schoolmaster and usher therein, and that it may be declared that all the rents issues and profits of the messuages lands tenements hereditaments and premises which passed to the said corporation under the will of the said Sir A. J. are applicable and ought to be applied to the support of the said school, and the maintenance of the schoolmaster and usher, subject to the appointment of part of the said rents and profits amongst the poor alms-men of the foundation of the said Sir A. J., and subject also to the deductions by the said Corporation or Company of a proportion of the said rents for their trouble, according to the proportion of £10 to the rents of the said estates at the date of the said will, and that it may be referred to one of the Masters of this court to take an account of all and singular the rents issues and profits of the several estates and premises belonging to the said charity, and other the revenues thereof received by the said defendants the Master Wardens and Commonalty of the mystery of the Skinners of L. or by their order or for their use, and of the applications and dispositions thereof, and that they may answer such parts of the said rents profits and revenues as shall appear to have been improperly applied by them from such time as this court shall direct, and that it may be referred to the said Master to apportion the rents of the estates and premises and other revenues devised by the will of the said Sir A. J. amongst the different parties interested in the same under the said will, and to settle a plan for the future application of all the rents and profits of the estates and other \*the revenues belonging to the said school at T. to the uses of the said school and of the schoolmaster and usher thereof, and that for the purposes aforesaid all necessary directions might be given. [And for general relief.] [ \*479 ]

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\*CLXXIV. *Information and bill (in the nature of a bill of peace) to restrain the inhabitants of a certain district from buying or bringing therein for the purpose of sale or consuming in their own houses or using any corn, grain, flour, malt, or meal which had not been ground at the relator's mills, which were ancient mills originally parcel of the possessions of the Duchy of Lancaster; Praying also for an account of all the corn, &c. used by the defendants in their houses, which according to the custom ought to have been ground at the relator's and to have a value set thereon; containing statements of informations filed by former proprietors of the mills against the inhabitants of the district, the establish-*

*ment of the custom on the trial of issues directed by the court, and the decrees made in the causes.*(5)

*(The interrogatories are inserted.)*

To the Right Honorable Nicholas Lord Bexley,  
Baron Bexley of Bexley in the county of Kent,  
Chancellor of his Majesty's Duchy and County  
Palatine of Lancaster.

Informing sheweth unto your lordship W. W. esquire his Majesty's Attorney-General of the said Duchy, by and at the relation of the Right Honorable Lady E. A. S. of, &c. now the widow and late the wife of J. H. S. late of, &c. but now deceased, the Right Honorable J. F. commonly called Lord J. F. of, &c., G. W. A. of, &c. esq. the Right Honorable C. F. commonly called Lord C. F. of, &c. G. W. (formerly G. S.) of, &c. esq. and J. P., J. E. and S. P. all of B. in the county of Y. corn millers, and also humbly complaining show unto your lordship your orators and oratrixes Lady E. A. S., Lord J. F., Lord C. F., G. W., G. W. A., J. P., J. E., S. P., and J. G. S. (the eldest son and heir at law of the said J. H. S.) an infant under the age of twenty-one years, by your orator G. W. A. his next friend, and H. S., E. S. S., G. L. S., M. I. S., and F. S. the five and only other children of the said J. H. S. deceased, by the said Lady E. A. S. and all infants under the age of twenty-one years, by your orator G. W. A. their guardian and next friend, That on or about the 22d day of November 1775, J. S. the father of the said J. H. S., deceased, and grandfather of your orator J. G. S., and W. N. of, &c. corn miller, exhibited their information in the name of his Majesty's then Attorney-General of the said Duchy at their relation in this honorable court, and also their bill of complaint against S. H. of B. aforesaid baker, T. C. of the same place merchant, and J. L. \*and W. V. both of M. in the said parish of, &c. thereby stating as in truth the facts were, That his late Majesty King James the First was seised in fee to him and his successors as part of his said Duchy of L. of and in the manor of B. aforesaid, and also of and in those two water corn mills under one roof called B. mills situate and being within the south part of B. with all suit and soke and other the rights and appurtenances thereunto belonging, and also of and in all that then new erected water corn mill situate and being within the east part of the vill of B. aforesaid, with the water-courses suit and soke and other the rights and appurtenances, thereunto belonging. And the said information and bill further showed as in truth the facts were, that all the tenants freeholders and copyholders and inhabitants within the said manor of B. and within two miles of the said mills had from time whereof the memory of man was not to the contrary, and from time to time ought to have done and then still of right ought to do suit and soke to the said mills, and to grind all the corn grain and malt by them expended or used in their said

Statement of  
an informa-  
tion and bill  
exhibited by  
J. S. and W.  
N. against S.  
H., T. C., J. L.  
and W. V.

[ \*480 ]

Stating that  
King James  
was seised of  
the manor of  
B., and certain  
corn mills,  
with all suit  
and soke  
thereto be-  
longing.

And a custom  
for all tenants,  
&c. within the  
manor to do  
suit and soke  
to, and grind  
all corn, &c.  
used within  
the manor and

(5) See *The Duke of Norfolk v. Myers*, 4 Madd. 83, 1 Madd. Ch. Pr. 170.

houses within the said manor of B. and within two miles of the said mills, at the said mills and at no other place; and that no tenant freeholder copyholder or inhabitant within the said manor and within two miles of the said mills ought to grind any corn grain or malt that should be used consumed and spent in their or any of their houses or for their or any of their uses at any other mills than the said B. mills late of his said late Majesty King James the First; and that by the said immemorial custom no person within the said manor and within two miles of the said mills ought to erect or build any other mills or set up any querns steel horse or hand mills for the grinding of corn grain or malt within the said manor; neither ought any carriers or loaders from any other parts to come within the said manor and within two miles of the said mills to fetch or carry away any corn grain or malt to any other mills to be ground there; and that the said tenants freeholders copyholders and inhabitants within the said manor of B. and within two miles of the said B. mills from time immemorial had paid and ought from time to time to pay a reasonable mulcture or toll for grinding their corn grain and malt at the said mills. And the said information and bill further showed as the facts were, that his said late Majesty King James the First, being so seised of the said manor of B. and the said mills, did by his letters patent under the great seal of England, and also under the seal of the Chancellor of his said Duchy of L. bearing date on or about the last day of July in the eighth year of his reign, give and grant to E. F. and F. P. the said mills, by the name and description of all those two corn mills under one roof called B. mills situate lying and being in the south part of B. in the county of Y., with the suit soke and other rights and appurtenances to the said mills or either of them belonging, in the tenure of Sir R. T. knight at the yearly rent of 6*l.* 6*s.* 8*d.*, and all that other water corn mill then newly built lying and being in the east part of the said vill of B. with all suit soke and other rights and appurtenances to the said mill belonging or appertaining, in the tenure of the said Sir R. T. at the yearly rent of 6*s.* 8*d.*, To have hold and enjoy the said mills and all messuages lands tenements waters pools fisheries soke suit \*toll and all other rights privileges and appurtenances thereunto belonging, unto the said E. F. and F. P. their heirs and assigns forever, which said premises were parcel of the possessions of the Duchy of L. and held of the said King James the First, his heirs and successors as of the manor of E. in the county of M. in common socage and not *in capite* or military service, Yielding and paying yearly to his said Majesty his heirs and successors for the said two mills under one roof called B. mills in the south part of B. aforesaid 6*l.* 6*s.* 8*d.*, and for the said mill newly built in the east part of B. aforesaid 6*s.* 8*d.* And the said information and bill further showed as the facts were, that after the making of the said letters patent the said E. F. and F. P. by several conveyances and assurances conveyed all their estate and interest of and in the said water corn mills, with all and singular the rights and appurtenances belonging thereto, unto the said Sir R. T.; and that he the said Sir R. T. being seised thereof did on or about the year of our Lord 1628 in the fourth year of the

two miles of the mills, at the same mills,

and that no person within the manor and two miles of the mills, ought to erect any other mills for grinding corn, &c. nor ought any carriers to come within the same district to fetch corn, &c. to be ground at other mills, and that the tenants, &c. ought to pay a reasonable toll for grinding their corn, &c. at the mills.

That King James by his letters patent granted the mills, with all suit and soke, unto E. F. and F. P. in fee, at certain annual rents.

[ \*481 ]

The same held of the Crown in common socage and not *in capite*.

That E. F. and F. P. conveyed the mills, &c. to Sir R. T.; who being seised thereof, exhibited his information against cer-

tain inhabitants.

A decree made therein, reciting, that the information was exhibited against the defendants for withdrawing their suit, soke, and mulcture from the relator's mills,

That the cause had been heard,

That it appeared that the town of M. where the defendants dwelt, was part of the manor.

That the ancestors of the defendant W. L. had done suit and ground their corn at the relator's mills without exception, and

[ \*482 ]

that the court was of opinion that the tenants of any of the King's manors ought to grind all the corn growing on their lands, or used in their houses, at his Majesty's mills; and so also at such mills when in the hands of fee-farmers or patentees.

The court de-

reign of his late Majesty King Charles the First, exhibit his information in the name of his Majesty's then Attorney-General at his relation, in this honorable court, against W. L. T. H. R. B. W. J. and J. B. and divers other the inhabitants of B. and M. aforesaid, and divers other inhabitants of divers other villages townships and hamlets within the said manor of B. tenants of and within the said manor of B. and who resided within two miles of the said mills, and the said cause coming on to be heard before this honorable court on or about the 21st day of May in the said year of our Lord 1628, a decree was made therein, reciting that by an information theretofore exhibited by the relator Sir R. T. knight into this court against the said defendants for withdrawing their suit soke and mulcture from the relator's mills of B. in the county of Y. whereof the said relator was fee-farmer to his Majesty; and that the said cause had been heard in this honorable court in Michaelmas Term then last past, so that it plainly appeared to this court that the town of M. where the defendants dwelled was parcel of and within the said manor of B.; and that the defendant W. L. his grandfather and his father and mother and elder brother having the same lands both freehold and copyhold in M. and B. aforesaid which the defendant W. L. had, did their suit and ground their corn at the relator's mills without exception, whether it grew upon freehold or copyhold land; and this honorable court was then of opinion that all his Majesty's tenants either freeholders or copyholders or other inhabitants within any of his Majesty's manors ought to grind all their corn growing upon any of their lands or bought or spent in their houses at his Majesty's mills in every such manor, and so likewise at the same mills being in the hands of his Highness's free-farmers or patentees; therefore the court did declare their opinion that all the tenants either freeholders or copyholders or other inhabitants within M. aforesaid and in other towns within the manor of B. aforesaid dwelling within two miles of the said relator's mills should do their suit and grind all their corn spent in their houses at the relator's mills, so as the same corn should be ground within twenty-four hours after the said corn was brought to the said mills; and did further order and decree concerning the said \*defendant W. L. his heirs and assigns of all his and their lands both freehold and copyhold in M. and B. aforesaid, that he and they should do their suit and grind their corn at the said relator's mills; and if the said corn could not be ground at the said mills within twenty-four hours after the same was brought thither, then to go to any other mills at their pleasure; and the said cause being heard again in court upon a motion made in this honorable court by the said defendant for a re-hearing thereof the said court did not find any cause to alter their former opinion on the former decree, and therefore did then and thereby order and decree that the said former order and decree should stand in force; and did further declare their opinion, according to former precedents in cases of this kind, that all the tenants freeholders and copyholders and inhabitants in M. and B. within two miles of the said relator's mills ought to grind all their corn growing upon any of their lands either freehold or copyhold or to be bought unground and spent in their houses at the rela-

tor's mills, and ordered and decreed that the said defendant W. L. his heirs and assigns of the said lands both freehold and copyhold in M. and B. aforesaid, should do their suit and grind their corn there, growing or bought unground and brought into the said manor and spent in his or their said houses in M. and B. aforesaid or either of them, at the said relator's said mills; and if the said corn was not or could not be ground within the space of twenty-four hours after the same was brought to the said mills, then the said defendants might for such time or times carry the same corn to any other mills at their pleasure; and lastly it was ordered, in respect of the delay and charges which the relator had been put unto in the said cause, and according to former orders in this court in that behalf, that the defendant W. L. his executors or assigns, should pay to the said relator the sum of twenty nobles for his costs expended in the said suit at the time therein mentioned; and the said information and bill referred to the said orders and decrees then and now remaining of record in this honorable court. And the said information and bill further showed as the facts were, that the said Sir R. T. afterwards and after obtaining the decree aforesaid, to wit, on the 8th day of February in the year of our Lord 1648, duly granted and conveyed the said mills suit and soke with all the rights members and hereditaments thereunto belonging, by indenture of feoffment of that date with livery of siesin indorsed unto and to the use of N. S. esq. his heirs and assigns forever, by virtue whereof the said N. S. became and was seised in his demesne as of fee-simple of and in all the said mills suit and soke with all the rights members and hereditaments thereunto belonging. And the said information and bill further stated as the facts were, that there were several other mesne conveyances of the said mills, whereby one E. H. became seised in fee-simple thereof, who by indenture dated the 12th November 1768, duly granted and conveyed all the same mills suit and soke with all the rights members and hereditaments thereunto belonging unto J. S. then of H. in the county of Y. esquire, (your orator J. G. S.'s great grandfather deceased,) he being then in the actual possession and enjoyment thereof, To hold the same unto and to the use and behoof of him the said J. S. the said great grandfather of your orator J. G. S. \*his heirs and assigns for ever, by means whereof the said J. S. became solely seised of all the said mills suit and soke with all the rights members and hereditaments thereunto belonging, and continued so seised until the month of April 1771, when he died seised thereof leaving the said relator and complainant J. S. your orator J. G. S.'s grandfather, his only son and heir at law, who became seised of the said mills suit and soke with all the rights members and hereditaments thereunto belonging in fee simple, at and under the said yearly fee-farm rents of £6 6s. 8d. and 6s. 8d. due and payable to his then present Majesty his heirs and successors in respect of his said Duchy of L. And the said information and bill further stated as the facts were, that the said J. S. the great grandfather of your orator J. G. S. did by a certain indenture of lease bearing date the 26th day of November 1768, set and to farm let the said water corn mills within the manor of B. aforesaid, and the suit and soke

clared that all tenants within the manor of B. dwelling within two miles of the relator's mills, should do suit and grind all corn spent in their houses, at the relator's mills, so as the same should be ground within twenty-four hours after the same was brought; and further decree, that W. L. should do suit and grind his corn at the relator's mills, but if the corn could not be ground within twenty-four hours, then to be at liberty to go to other mills. That upon a re-hearing the decree was affirmed; and a further decree made, according to former precedents extending the decree to all corn [ \*483 ] growing upon the tenant's lands or to be bought unground, and the court also ordered the defendant W. L. to pay to the relator twenty nobles for his costs. That after the decree, Sir R. T. conveyed the mills suit and soke by feoffment with

livery of seisin to N. S.

That eventually the same became vested in E. H. who by deed conveyed the same to J. S. the great grandfather of the plaintiff J. G. S.

That he died seised thereof, leaving the re-lator J. S. the grandfather of J. G. S. his heir at law, who became seised thereof, subject to the payment of the yearly rents.

A lease of the mills, &c.

granted by J. S. the great grandfather of J. G. S. to the re-lator W. N., who was then in the enjoyment thereof as tenant to the re-lator J. S.

That the fee farm rents had been regularly paid.

That the owners of the

[ \*484 ] mills had constantly kept the mills in repair, and kept millers, servants, &c. to attend thereto, and that the owners and farmers of the mills were entitled to have and receive all suit soke toll, &c.

That all tenants, &c. with- in the manor

mulcture and all other benefits and advantages belonging thereto, unto the said W. N. for and during the term of seven years from the 7th day of November then last past at and under the clear yearly rent of £166 13s. 4d. payable at Whitsuntide and Martinmas in each year by equal half-yearly payments; and by virtue whereof he the said W. N. entered upon and took possession of the said mills and premises, and had then ever since held and enjoyed and then still held and enjoyed the same under the said lease, or was entitled so to do as the tenant of the said J. S. the said relator. And the information and bill further stated as the fact was, that the said annual fee farm rents had been constantly and duly paid by the said J. S. the said relator and those under whom he claimed the said mills and premises to his said Majesty and his predecessors, kings and queens of England, or the grantees or patentees of the said fee farm rents, and that all the owners proprietors and farmers of the said water corn mills during the time whereof the memory of man was not to the contrary had been, and the said J. S. the said relator then was, obliged to keep in good repair and condition the said water corn mills or such of them as should be sufficient for the suitors thereof, and to retain keep and pay millers servants loaders and horses to do attend and despatch the business and duty of the said water corn mills, and that all the owners and proprietors of the said water corn mills by themselves or their respective farmers thereof for the time being for all the time aforesaid had had and received and of right ought to have and receive all the suit soke toll or mulcture for grinding of all the corn grain and malt of and from the tenants freeholders copyholders residents and inhabitants of and within the said manor of B. and in M. aforesaid residing within two miles of the said B. mills or any of them; and that all and singular the tenants freeholders copyholders residents and inhabitants of and within the said manor and residing within two miles of the said B. mills had from time to time whereof the memory of man was not to the contrary either by custom prerogative reservation restriction prescription ancient usage right and tenure of and under the said manor used and accustomed and been bound and ought to grind at the said B. corn mills and not elsewhere, all the corn grain and malt which they or any of them from time to time had had used and expended or \*consumed in the houses within the said manor and within two miles of the said B. mills, and had been accustomed and ought to carry such their corn grain and malt to the said water corn mills at B. to be ground there, or otherwise to deliver the same corn grain and malt to the carriers or loaders of corn belonging to the said B. mills to be carried thereto to be ground, and that the said tenants freeholders copyholders residents and inhabitants were by such ancient usage prescription prerogative reservation restriction or tenure as aforesaid or otherwise bound so to do; and that they or any of them ought not to carry or deliver any of the said corn grain and malt so consumed by them as aforesaid to be carried to be ground to any mill or mills other than the said B. corn mills for grinding whereof the said tenants freeholders copyholders residents and inhabitants had always time out of mind paid a certain and reasonable toll and mulcture to the owners or farmers of the said



mills for the time being. And the said information and bill further stated as the facts were that the said relator and complainant J. S. (your orator J. G. S.'s late grandfather) and those under whom he claimed their farmers and tenants had been obliged to expend and had actually expended very large sums of money in maintaining and upholding the said mills and the water-courses dams wears and flood-gates belonging thereto, and in and about the repairing the said mills, and providing and maintaining millers servants loaders carriers and mill-horses for the service of the said suitors within the said manor of B. and at the said mills; and that the said W. N. then was daily at great charges and expenses about the same. And the said information and bill further showed as the facts were, that the said mills then were and from time to time and at all times past had always been able and sufficient in due time to serve and despatch all the grist corn grain and malt of the suitors thereto, and the said mills then were and had been duly repaired and maintained attended and served as the same ought to be for the benefit and service of the said suitors. And the said information and bill further stated as the facts were, that no person or persons ought to erect or set up within the said manor of B. within the distance of two miles from the said B. mills any querns water corn-mills horse-mills hand-mills steel-mills or any other mills or engines for grinding any corn grain or malt to the prejudice of the said B. corn-mills, nor ought any carriers or loaders of corn of or belonging to any mill or mills out of the same manor to come into the said manor and within two miles of the said B. mills to fetch or carry away any corn grain or malt from thence to be ground at such or any foreign mill or mills; and that where any such quern or mills had been erected or used or such loaders or carriers of such foreign mills had come and carried any corn or grain to be ground at such foreign mills, such new erected querns mills and engines had been usually demolished and pulled down, and that the owners of such foreign mills had been restrained from sending carriers into the said manor within two miles of the said B. mills to fetch any corn grain or malt belonging to any of the said inhabitants within the said manor within two miles of the said B. mills to be ground at such foreign mill or mills, and that such carriers or loaders had been usually punished, and enjoined not to come to fetch or carry any \*corn or grain of the said tenants freeholders copyholders residents and inhabitants within the said manor within two miles of the said B. mills to be ground at any other mill or mills. And the said information and bill charged as the facts were, that the said defendants or some or one of them had for the space of ten years then last past been the owners or owner or occupiers or occupier of a certain horse mill or mills situate within the said manor of B. aforesaid and within two miles of the said B. mills, and had at such their or his mills or mill during the time aforesaid and for several years then past ground the corn grain and malt of the tenants inhabitants and residents or some of them of and in the said manor of B. and living within two miles of the said B. mills by them respectively used within their respective houses in the said manor of B. and within two miles of the said B. mills, although as the said information and bill expressly

and two miles of the mills from time immemorial were bound and ought to grind at the said mills, and not elsewhere, all corn, &c. used within the manor and two miles of the mills, and were accustomed and ought to carry their corn, &c. to or deliver the same to the carriers belonging to the mills to be carried there-to to be ground, and ought not to carry or send the same to any other mills, and ought to pay certain toll for grinding the same.

That the relator J. S. his farmers and tenants had expended large sums in repairing the mills, dams, &c. and providing millers, servants, &c. and were daily at great expenses;

[ \*485 ] That the mills had always been sufficient to grind all the corn, &c. of the suitors thereto, and had been duly repaired, &c.; That no person ought to erect within the manor and two miles of the mills any

other mills, &c.; nor ought any carriers belonging to other mills to come within the same district to fetch corn, &c.

That any newly erected mills were usually demolished, and the owners thereof restrained from sending carriers to fetch the corn belonging to the inhabitants, and the carriers punished,

That the defendants were owners or occupiers of horse mill or mills situate within the manor and two miles of the mills, and had thereat ground the corn, &c. of the tenants, &c. within that district. Although the defendants well knew that such corn, &c. ought to be ground at the relator's mills and not elsewhere.

[ \*486 ]

That the defendants had within their house steel or hand mills with which they had ground malt for the use of themselves and other inhabitants;

charged as the facts were, they well knew that the corn grain and malt which the said inhabitants tenants and residents within the said manor of B. and living within two miles of the said B. mills had upon their lands and grounds or eat spent and consumed in their said houses and families ought to be ground at the said B. corn mills and not elsewhere. And the said information and bill further charged as the facts were, that the said defendants or one of them did severally keep within their respective houses within the said manor one or more steel-mills or hand-mills for the grinding of malt and other grain, wherewith they had respectively ground large quantities of malt not only for their own families' use, but also for divers other the tenants and inhabitants within the said manor and within two miles of the said B. mills, and had made great profits thereby, and insisted they had a right so to do; and as the facts were, that they the said T. C., S. H., J. L. and W. V. or some of them then were and for many years had been residents and inhabitants of houses and occupiers of land in B. and M. within the said manor of B. and within two miles of the B. mills, and that they some or one of them had eat spent and consumed in their some or one of their houses situate within the said manor of B. and within two miles of the said mills several large quantities of corn and grain of different sorts and malt which they had caused to be ground at some foreign mill or mills without sending the same to be ground at the said B. mills as aforesaid, whereby the said W. N. had been as the fact was, defrauded of the suit toll and mulcture and the benefit which would have arisen to him in case such corn grain and malt had been ground at the said B. corn-mills. And the said information and bill further charged as the facts were, that the said T. C., S. H., J. L. and W. V. were bakers residents and inhabitants aforesaid within the said manor as aforesaid, and lived within two miles of the said B. mills, and had purchased great quantities of meal and flour the produce of corn ground at other mills than the said B. water corn-mills; and great quantities of malt ground at other mills than the said water corn-mills; and had baked great quantities of meal and flour into bread and had sold the same in the way of their trade and business as bakers, and other quantities of such meal and flour they had sold and disposed of; and other parts of such meal flour and malt they had spent and used in their own houses in the said \*manor or lordship of B.; and that the selling such meal and flour, or using the same in their said trade or business, or spending or using such meal flour and malt in their said dwelling-houses was a fraud upon the said relators, and greatly tended to frustrate and defeat the right of the said relator W. N. to the mulcture of such corn and malt. And the said information and bill further stated as the facts were, that the said defendants or some of them had purchased from time to time great quantities of malt flour and meal produced from corn and grain not ground at the said B. mills, and had consumed the same in their families in B. and M. within two miles of the said B. mills, and without paying any toll or mulcture at the said B. mills for the same, and which the said information and bill charged to be as in fact it was a great fraud; and that the said defendants ought not to be permitted to consume malt corn grain meal and flour in their families or houses

situate as aforesaid within two miles of the said B. mills, and which had not been ground at the said mills, nor to purchase malt corn grain meal or flour ground in any other mills but the said B. mills, and which the said information charged as the facts were, that the said defendants had severally done, and had ground divers large quantities of malt corn and grain consumed and used in their families or houses within two miles of the said B. mills at inferior and other mills situate within the said manor of B. or at some other mills besides the said B. mills. And the said information and bill prayed that the said defendants might be restrained by the injunction of this honorable court from grinding any malt corn or grain had upon their or any of their lands, or eat consumed and spent in their houses within the said manor of B. and within two miles of the said B. mills at any other mills save the said B. mills, and that they might be compelled to grind or cause to be ground all the corn grain and malt consumed and spent by them in their said houses at the said mills, and pay the usual toll for such grinding thereof; and that the said defendants might be restrained from buying any flour or meal ready ground, and from consuming the same in their own houses and within two miles of the said B. mills; and that they might also be restrained from spending or consuming any corn malt or other grain in their said houses which had not been ground at the said mills at B. aforesaid; and that the said defendants might be restrained from grinding and from fetching and receiving in order to be ground, any other corn grain and malt of the tenants residents and inhabitants of the said manor or lordship of B. and within two miles of the said B. mills for the purpose of having it ground at other mills than the said B. mills; and that the said W. N. might have a satisfaction from the said defendants who should appear to be liable thereto for such toll and mulcture as had been withdrawn from him by means of any matters aforesaid; and that an account might be taken thereof, and the defendants decreed to pay what should be due upon such accounts; and that the said ancient customs and rights of and belonging to or concerning the said B. mill might be confirmed and established and all proper directions given for the same; and that by means thereof the said W. N. might be enabled to pay the said yearly rent of £166 13s. 4d. so reserved in the said demise to him \*made by the said relator J. S. as aforesaid, and to maintain and uphold the said dams and water-courses belonging to the said water corn-mill, and other the repairs thereof, and the said relator J. S. might be the better enabled to pay the said fee-farm rents of 6l. 6s. 8d. and 6s. 8d. to his Majesty and his successors; and that the soke suit and right of the said last-mentioned water corn-mills might be fully established and declared by and under the direction of this honorable court, and thereby preserved for the future; and that the said horse hand and steel mills within the said manor in the possession of the said defendants might be suppressed and demolished; and that the said J. S. and W. N. might have such further and other relief in the premises as the nature and circumstances of their case might require and as should be agreeable to equity and good conscience. And the said Attorney-General at the relation aforesaid and your

That the defendants were inhabitants within the manor and two miles of the mills, and had consumed corn, &c. which had been ground at foreign mills whereby the relator W. N. had been defrauded of the suit toll, &c.

That the defendants were bakers, and had purchased meal, flour, and malt ground at other mills than the relators, and had baked meal and flour into bread, and had sold meal and flour, and other part they had consumed in their own houses, and had thereby committed a fraud upon the relators.

That the defendants had purchased malt, flour, and meal, produced from

[ \*487 ]

corn and grain, not ground at the relator's mills, and consumed the same in their families without paying toll for the same, and thereby a fraud was committed, and that the defendants ought not to consume or to

purchase any such malt, corn, grain, meal, or flour; The information and bill prayed that the defendants might be restrained from grinding malt, corn, or grain had upon their lands or consumed in their houses at any other save the relator's mills, and that they might be compelled to grind corn, &c. at the relator's mills, and pay the usual tolls, also to restrain them from buying flour or meal ready ground, and consuming the same, or consuming corn, &c. not ground at the relators' mill; or grinding or receiving corn, &c. of any tenants, &c. in order to be ground; That the relator W. N. might have satisfaction for the toll withdrawn, and that an account might be taken thereof;

[ \*488 ]

That the ancient customs might be confirmed, and the relator W. N. thereby enabled to pay his rent, and the relator J. S. enabled to pay the fee-

orators and oratrixes further show unto your lordship that the said defendants to the said information and bill severally appeared and put in their answers thereto; and the said S. H. and W. V. by their said answers denied that all the tenants freeholders and copyholders and inhabitants within the said manor of B. and within two miles of the said mills called B. mills had from time to time whereof the memory of man was not to the contrary done or ought to have done, or that they then still of right ought to do suit and soke of the said mills; and the said last-named defendants insisted that from time immemorial oatmeal and other meal and flour ground at other mills besides the said B. mills had been publicly exposed to sale in the market of B. aforesaid, and had been constantly purchased and used by the tenants and inhabitants of the said manor of B. residing within two miles of the said mills called B. mills, and that such tenants and inhabitants always conceived that they had an undoubted right to purchase such meal and flour and to use and consume the same in their houses and families. And the said Attorney-General at the relation aforesaid and your orators and oratrixes further show unto your lordship that after the defendants in the said information and bill named had severally put in their said answers thereto as aforesaid, the cause came on to be heard on or about the 16th day of May 1781 before the Right Honorable the Chancellor and the Council of the said Duchy being assisted by the Right Honorable William Earl of Mansfield, Chief Justice of the Court of King's Bench, and the Honorable Edward Willis, one of the Justices of the same Court, being the Judges' assistant of this Court, when it was ordered that the parties should proceed to a trial at law in the Court of King's Bench at the then next Summer Assizes for the county of Y. on the following issues, (that is to say:) First, whether all the tenants freeholders and copyholders and inhabitants within the manor of B. and within two miles of B. mills late of his Majesty King James the First, had from time to time whereof the memory of man was not to the contrary and from time to time ought to have done and still of right then ought to do suit and soke to the said mills, and had from time immemorial ground and from time to time ought to grind all the corn grain and malt by them expended or used ground in their said houses and within the said manor of B. and within two miles of the said mills at the said mills and in no other place, and \*no tenant freeholder copyholder or inhabitant within the said manor and within two miles of the said mills, ought to grind any corn grain or malt that should be used consumed and spent ground in their or any of their houses or for their or any of their uses at any other mills than the said B. mills; and secondly, whether the said B. mills were sufficient to grind all such corn grain and malt of the said tenants freeholders copyholders and inhabitants within the said manor and within two miles of the said mills, which by them might be expended or used ground in their said houses within the said manor of B. and within two miles of the said B. mills; and that in order to such trial the relators in the said information and bill named were to be the plaintiffs at law and the said defendants S. H. and W. V. were to be defendants at law; and the court reserved the consideration of

costs and all further directions until the trial was had. And the said Attorney-General at the relation aforesaid, and your orators and oratrixes further show unto your lordship that on or about the 31st day of January 1782, the said last-mentioned cause came on to be heard in this court for further directions upon the equity reserved, before the Chancellor and Council of the said Duchy being assisted by the Honorable Sir G. Nares, knight, one of the Justices of the Court of Common Pleas, and the Honorable J. Heath, one other of the Justices of the same Court; and it was shown to the court that in pursuance of the said order of the 16th day of May 1781 the parties did proceed to a trial at law upon the said issue at the then last Summer Assizes for the county of Y. before the said Mr. Justice N. and a special jury of the said court, and that verdicts were given in such trial for the plaintiffs on both the said issues in the words of the said issues; and the said Mr. Justice N. certified to the court that he was perfectly satisfied with the said several verdicts so found on the said trial by the said jury, whereupon the Chancellor and Council of the said Duchy Court being assisted as aforesaid, did by their decree dated the said 31st day of January 1782, declare that the tenants freeholders copyholders and inhabitants within the manor of B. aforesaid and within two miles of the said B. mills late of his Majesty King James the First and then of the said relator J. S., from time to time ought to have done and then still of right ought to do suit and soke to the said mills, and had from time immemorial ground and from time to time ought to grind all the corn grain and malt by them expended or used ground in their said houses within the said manor of B. and within two miles of the said mills at the said mills and at no other place; and that no tenant freeholder copyholder or inhabitant of and within the said manor and within two miles of the said mills ought to grind any corn grain or malt which should be used consumed and spent ground in their or any of their houses or for their or any of their uses at any other mills than the said mills of the said relator J. S.; and did declare the custom in manner aforesaid to be well proved and that the same ought to be established, and did order and decree the same accordingly; and that the said tenants freeholders copyholders and inhabitants of the said manor of B. and within two miles of the said mills ought to pay the toll or mulcture for grinding the same as thereafter mentioned, (that \*is to say:) for grinding wheat one-sixteenth part thereof, and for shelling oats and grinding the same into meal one-twenty-fourth part thereof, and for making oats into shelling one-forty-eighth part thereof, and for grinding malt an unheaped peck for a quarter containing nine bushels Winchester measure, and for grinding peas beans barley and rye one-sixteenth part thereof respectively; but the said Chancellor and Council of this court being assisted as aforesaid did declare that in case any corn grain or malt of such tenants freeholders copyholders and inhabitants brought to the said mills or any of them, should not be ground within the space of twenty-four hours next after the same should be there left to be ground, such tenants freeholders copyholders and inhabitants ought to be at liberty to take away such corn grain and malt and grind the same elsewhere; and it was further

farm rents to the Crown;  
That the soke suit, and right of the relator's mills might be established and preserved, and all other mills suppressed;

And for general relief.

That the defendant's appeared and put in their answers.

That S. H. and W. V. by their answers denied that all the tenants, &c. were bound to do suit and soke to the relator's mills, and insisted that meal, &c. had immemorially been ground at other mills and exposed to sale and purchased by the inhabitants residing within the manor and two miles of the mills.

That the cause came on to be heard,

and several issues were directed:

First issue;

[ \*489 ]

Second issue;

Costs and further directions reserved.

That the cause came on to be heard for further directions;

that it appeared that upon the trial at law verdicts were given for

the plaintiffs on both issues; That the judge certified that he was satisfied with the verdicts,

whereupon the court decreed that the tenants, &c. within the manor and two miles of the relators' mills ought to have done and ought to do suit and soke thereto, and grind all their corn, &c. at such mills and no others; and declared that the custom was well proved;

That the tenants, &c. ought to pay the tolls specified; But the court declared that in case the corn, &c. was not ground within twenty-four hours after the same was left, the tenants ought to be at liberty to take the same elsewhere;

[ \*490 ]

And a perpetual injunction granted to restrain all the tenants, &c. from erecting or using other mills, &c., and from buying or bringing into the manor and within two miles of the mills for the

ordered and decreed that the said defendants in the said cause, and also all other the tenants freeholders copyholders and inhabitants of and within the said manor of B. and within two miles of the said mills, should be and they were perpetually restrained from erecting using resorting to or employing any mill or mills quern or querns engine or engines whatsoever to the prejudice of the soke and suit to be performed by them or any of them or by any other of the tenants freeholders copyholders or inhabitants within the said manor of B. and within two miles of the said B. mills to the said mills of the said relator J. S. or any or either of them, and from grinding any malt corn or grain had upon their or any of their lands consumed or spent in their or any of their houses within the said manor of B. and within two miles of the said B. mills at any other mill or mills or other engine or engines save the said relators' said mills; and that the said defendants in the said cause and all other the said tenants freeholders copyholders and inhabitants within the said manor of B. and within two miles of the said B. mills, should be and they were in like manner restrained from buying or bringing into the said manor of B. and within two miles of the said mills, for the purpose of selling or disposing of the same to any of the said tenants freeholders copyholders and inhabitants within the said manor of B. and within two miles of the said B. mills to be used spent or consumed therein, any corn grain flour malt or meal ready ground, or from consuming or using the same or any part thereof at or in their respective house or houses within the said manor of B. and within two miles of the said mills of the said relator; and they were in like manner also restrained from making baking or brewing any flour meal or malt which should not have been ground at the said B. mills into any bread beer ale or other liquor to be spent used sold or disposed of by them respectively in order to be used spent and consumed within the said manor of B. and within two miles of the said B. mills; and they were in like manner also restrained from using spending or consuming any corn malt or other grain ground in their said houses respectively which had not been ground at the said relator's said mills; and it was further ordered that the clerk of the Council of this court or his deputy should take an account of all the corn grain and malt which according to the said custom ought to have been ground by the said defendants or either of them at the \*said mills of the said relator J. S. and which had been by them respectively ground elsewhere in derogation of the said custom since the 24th day of June 1772; and it was further ordered that the said clerk of the Council or his deputy should compute or set a value upon the toll or mulcture of such corn grain and malt, according to the rate and proportion therein mentioned, (that is to say:) the toll or mulcture of such wheat one-sixteenth part thereof, and of such shelling oats and grinding the same into meal one twenty-fourth part thereof, and of such malt an unheaped peck to a quarter containing nine bushels, and of such peas beans barley and rye one-sixteenth part thereof respectively; and it was further ordered and decreed that what should be found to be the value or amount of the toll or mulcture of such corn grain and malt withdrawn from the said mills of the said relators

should be paid by the said defendants respectively to the said relator J. S.; and for the better taking the said accounts, the parties were to be examined on interrogatories as the clerk of the Council or his deputy should direct, who in taking the said accounts was to make all parties all just allowances; and it was further ordered and decreed that the said defendants S. H. and W. V. should pay unto the said relator J. S. his costs of the said suit, and of the trial of the issues directed by the decree made on the hearing thereof, together with the costs of the motion for a new trial, to be taxed by the said clerk of the Council or his deputy; and it was further ordered that any of the parties should be at liberty to apply to this court as there should be occasion. As in and by the said information and bill answers decrees and other proceedings had in the said cause now filed as of record in this honorable court, reference being thereunto had will more fully appear. And the said Attorney-General at the relation aforesaid, and your orators and oratrices further show unto your lordship, that the said relator and complainant J. S. (your orator J. G. S.'s said grandfather) afterwards and after obtaining the said decree, continued to be so seised as aforesaid of all the said mills suit and soke with all the rights members and hereditaments thereunto belonging, until the — day of —, when he died seised thereof intestate, as to the same, leaving the said J. H. S. your orator J. G. S.'s said late father his eldest son and heir at law, and who thereupon became and was until the time of his death hereinafter mentioned, seised of the said mills suit and soke with all the rights members and hereditaments thereunto belonging in fee-simple, at and under the aforesaid yearly fee-farm rents due and payable for the same, subject however after the execution of the settlement hereinafter mentioned, to the trusts of such settlement. And the said Attorney-General at the relation aforesaid, and your orators and oratrices further show, that the said J. H. S. your orator J. G. S.'s said late father being so seised of the said mills suit and soke with all the rights members and hereditaments thereunto belonging as aforesaid, on or about the 15th day of April — by indentures of lease and release bearing date respectively the 14th and 15th days of April in the same year, and made and executed previously to and in consideration of a marriage afterwards had between the said J. H. S. and your oratrix Lady E. A. S. then Lady E. A. F. conveyed (among other hereditaments) \*the said mills suit and soke with all the rights members and hereditaments thereunto belonging unto your orators Lord J. F. and G. W. A. their heirs and assigns for ever, To the use of the said J. H. S. and his heirs until the said marriage should be solemnized, and from and immediately after the solemnization thereof, To the use of Lord H. F. and Sir W. O. their executors administrators and assigns for and during the term of ninety-nine years thence next ensuing, without impeachment of waste, Upon trust to secure the payment to your oratrix Lady E. A. S. of the sum of £400 per annum during the joint lives of your oratrix and the said J. H. S. as therein mentioned, (and which annuity has been fully paid and satisfied to your last-named oratrix,) with remainder, To the use of the said J. H. S. and his assigns during his natural life, without impeachment

purpose of selling to any tenants, &c. any corn, &c. to be used therein,

And from making, baking, or brewing, any flour, meal, or malt not ground at the relator's mills,

or using any corn, &c. in their houses not ground at the relators mills;

And the necessary accounts directed to be taken.

S. H. and W. V. ordered to pay the relator J. S. his costs of the suit and of the trial of the issues, and of a motion for a new trial.

That the relator J. S. continued seised up to the time of his death.

That he died intestate, leaving J. H. S. his heir, who thereupon became seised of the mills, and

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continued so seised until his death but subject to the limitations contained in a settlement executed by him upon his marriage.

Indentures of lease and release executed by J. H. S., whereby the

mills with other hereditaments were limited,

To the use of J. H. S. until the marriage, and after the solemnization thereof,

To the use of trustees for 99 years for securing pin money to plaintiff E. A. S. his intended wife;

Remainder To the use of J. H. S. for life;

Remainder To the use of trustees to preserve contingent remainders;

Remainder To the use that plaintiff E. A. S. might receive a jointure rent-charge of 1200*l.* during her life,

Remainder To the use of trustees for 1000 years;

Remainder To the use of J. H. S. in fee.

The trusts of the 1000 years term declared to be for securing the jointure rent-charge, and for raising portions for the younger children of the marriage.

[ \*492 ]

That the marriage was duly solemnized, and the issue thereof six children, plaintiffs.

of waste, with remainder, To the use of your orators Lord J. F. and G. W. A. Upon trust to preserve contingent remainders during the life of the said J. H. S., with remainder, To the use intent and purpose that your oratrix Lady E. A. S. if she should survive the said J. H. S., might have and receive the yearly sum of £1200 during her life, and might have all the usual remedies for raising and enforcing payment of the same, with remainder, To the use of your orators Lord C. F. and G. W. by his then name of G. S. their executors administrators and assigns for and during the term of one thousand years, Upon the trusts thereafter mentioned, with remainder, To the use of the said J. H. S. his heirs and assigns for ever; And the trusts of the said term of one thousand years were thereby declared to be for securing to your oratrix Lady E. A. S. the said yearly sum of £1200 during her life, and subject thereto for raising certain sums of money therein mentioned, as the portions of the younger children or younger child of the said then intended marriage. As by the said indentures of lease and release when produced will appear. And the said Attorney-General at the relation aforesaid, and your orators and oratrixes further show unto your lordship, that the said intended marriage was duly had and solemnized between the said J. H. S. and your oratrix Lady E. A. S., and that there were issue of the said marriage your orators and oratrixes J. G. S., H. S., E. S. S., G. L. S., M. I. S., and F. S. And the said Attorney-General at the relation aforesaid, and your orators and oratrixes further show unto your lordship, that the said J. H. S. on or about the — day of —, by a certain indenture of demise, demised the said water corn-mills within the manor of B. aforesaid, and the suit soke and all other the benefits and advantages belonging thereto, unto your orators J. B., J. E., and S. P., To have and to hold the same for the term of — years to commence on the — day of — then next ensuing, at and under the clear yearly rent of £ — payable to the said J. H. S. his heirs and assigns; and by virtue of such demise, your orators J. P., J. E., and S. P. on the said — day of — in the year —, entered upon and took possession of the said mills and premises, and have ever since held and enjoyed and still hold and enjoy the same under the said demise, or are entitled so to do and to receive the profits thereof. And the said Attorney-General at the relation aforesaid, and your orators and oratrixes further show unto your lordship, that the said J. H. S. \*being so seised as aforesaid of and in the said mill suit and soke and the rights members and appurtenances thereof, departed this life on or about the — day of — intestate as to the said mills suit and soke and the rights members and appurtenances thereto belonging, leaving your orator J. G. S. his eldest son and heir at law, your oratrix Lady E. A. S. his widow, and your orator and oratrixes H. S., E. S. S., G. L. S., M. I. S., and F. S. his younger children him surviving; and the said J. H. S. by his last will and testament in writing dated the — day of — 1820, appointed your oratrix Lady E. A. S. the guardian of the persons of your orators and oratrixes his children, and also thereby appointed your orators G. W. then G. S. and G. W. A. the guardians of the estates



of his said children and also the executors of his said will, and they have since duly proved the same in the proper Ecclesiastical Court. And the said Attorney-General at the relation aforesaid, and your orators and oratrixes further show unto your lordship, that upon the death of the said J. H. S. in manner aforesaid, the said mills suit and soke and all the rights members and hereditaments thereunto belonging descended upon your orator J. G. S. as such eldest son and heir at law as aforesaid, and he thereby became and hath ever since been and still is seised of the said mills suit and soke and the rights members and hereditaments thereunto belonging in fee-simple subject however to the trusts of the said term of one thousand years therein. And the said Attorney-General at the relation aforesaid, and your orators and oratrixes further show unto your lordship, that ever since the said decree of the 31st day of January 1782, the said annual fee-farm rents have been duly paid or satisfied by or on the behalf of the said relator J. S. and the said J. H. S. and your orators J. G. S., and the said water corn-mills and premises have ever since such decree been kept and now are in good repair and condition, or such of them as are sufficient for the suitors thereto, and millers servants loaders and horses sufficient to do attend and despatch the business and duty of the said water corn-mills have been retained kept and paid, and are now by your orators and oratrixes or some of them retained kept and paid to do the business and duty of the said water corn-mills, and that the said B. mills are and always have been since the making of the said decree sufficient to grind all such corn grain and malt of the said tenants freeholders and copyholders and inhabitants within the said manor and within two miles of the said mills, which by them may be expended or used ground in their houses within the said manor and within two miles of the said mills. And the said Attorney-General and your orators and oratrixes well hoped that the inhabitants of the said manor living and residing within two miles of the said B. mills would have observed the said customs declared by this honorable court in manner aforesaid to have been well proved, and would have ground all their corn grain and malt had upon their lands and bought and spent ground and consumed in their houses at the said B. mills, and that they would not have bought and brought into the said manor of B. and within two miles of the said mills for the purpose of selling or disposing of the same to any of the said \*tenants freeholders copyholders and inhabitants within the said manor of B. and within two miles of the said B. mills to be used spent or consumed therein, any corn grain flour malt or meal ready ground for the purpose of the same being consumed or used at or in their respective house or houses within the said manor of B. and within two miles of the said mills, and would not have made baked or brewed any flour meal or malt which had not been ground at the said B. mills, into any bread beer ale or other liquor to be spent used or sold or disposed of by them in order to be used spent and consumed within the said manor of B. and within two miles of the said mills, and would not have used spent or consumed any corn malt or other grain ground in their said houses respectively which had not been ground at the said

Lease of the mills executed by J. H. S. to plaintiffs J. P. J. E. and S. P. who are still in possession thereof under such lease.

Death of J. H. S. intestate as to the mills, Leaving plaintiff J. G. S. his heir at law, and his widow and younger children surviving.

The will of J. H. S. appointing his widow E. A. S. guardian of the persons of the plaintiffs, and plaintiffs G. W. and G. W. A. guardians of their estates, and executors of his will, and that they have proved the same.

That upon the death of J. H. S. the mills descended to plaintiffs J. G. S. as his heir at law, who is still seised thereof, subject to the trusts of the 1000 years term.

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That ever since the decree, the fee-farm rents have been duly paid, and the mills kept in repair, and millers, servants, &c. employed to do the business thereof; and that the

mills have always been sufficient to grind all corn, &c. consumed by the inhabitants within the manor and two miles of the mills.

## IV.

That the defendants are tenants, freeholders, &c. and reside within the manor and within two miles of the relator J. G. S.'s mills.

That the defendants have brought into the manor and within two miles of the relator's mills for the purpose of selling to the inhabitants, corn, &c., ready ground, and which had not been ground at the relator's mills; that they have consumed in their houses flour, &c. not ground at the relator's mills;

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That the defendants J. B. and J. D. occupy a corn mill near to but not within the manor or within two miles of the relator's mills; That since the death of J. H.

B. mills. BUT NOW SO IT IS may it please your lordship that W. R., S. R., J. W., J. B., J. D. and J. T. all of whom have been ever since the death of the said J. H. S. and now are tenants freeholders copyholders residents and inhabitants within the said manor of B., and all of whom have ever since the death of the said J. H. S. lived and resided and now live and reside respectively within two miles of the said mills so belonging to your relator and orator J. G. S. as aforesaid, combining and confederating together and with divers other persons to the said Attorney-General and to your orators and oratrixes at present unknown, whose names when discovered they pray may be herein inserted and they made parties defendants hereto with proper and apt words to charge them, and contriving how to injure and prejudice your orators and oratrixes and his Majesty respectively in the premises, and to destroy and overturn the said customs and usages and the rights and privileges suit soke and service belonging to the said mills, and thereby as far as in them lies to disable your orator J. G. S. from paying the rents so reserved to his Majesty as aforesaid, and now payable to his Majesty or the patentees of the crown, and your orators the said J. B., J. E. and S. P. from paying the said yearly rent of £—— to your orator J. G. S., and from maintaining and repairing the said water corn-mills and the dams weirs and water-courses and other the premises thereunto belonging, they the said confederates have respectively brought or caused to be brought into the said manor of B. and within two miles of the said mills for the purpose of selling or disposing of the same or some part thereof to the tenants freeholders copyholders and inhabitants within the said manor of B. and within two miles of the said B. mills or some of them to be used spent or consumed therein, divers large quantities of corn grain flour malt and meal or some of them ready ground and which had not been ground at the said B. mills, and have or has sold or disposed of the same to the said tenants freeholders copyholders and inhabitants or some of them; and that the said defendants have respectively and each of them hath since the death of the said J. H. S. used spent or consumed at or in their respective houses within the said manor of B. and within two miles of the said B. mills divers large quantities of flour and meal or flour or meal which has not been ground at the said B. mills. And the said Attorney General at the relation aforesaid and your orators and oratrixes further charge that the said J. B. \*and J. D. are and ever since the death of the said J. H. S. have been the occupiers of a corn mill situate in the township of H. which is near to but not within the said manor of B. or within two miles of the said B. mills; and that the said last named defendants have since the death of the said J. H. S. ground or caused to be ground, large quantities of corn and grain at their said mill at H. and made large quantities of flour and meal therefrom; and that the said last-named defendants have respectively since the death of the said J. H. S. used spent and consumed large quantities of the said flour and meal so ground at their said mill as aforesaid, at or in their respective houses within the said manor of B. and within two miles of the said B. mills; and the said last-named defendants have also sold or disposed of large

quantities of flour and meal or flour or meal being other parts of the said flour and meal so as aforesaid ground at their said mill at H. aforesaid, to the said defendant J. W. and other tenants freeholders copyholders and inhabitants within the said manor of B. and within two miles of the said B. mills to be used spent or consumed therein; and the said J. W. and such other tenants freeholders copyholders and inhabitants within the said manor of B. and within two miles of the said B. mills have respectively used spent and consumed such flour and meal or some part thereof at or in their respective houses within the said manor of B. and within two miles of the said B. mills; and the said W. R. has since the death of the said J. H. S. bought or obtained from one W. S. who resides in H. and also from various other persons divers large quantities of flour and meal which had not been ground at the said B. mills, and has used spent or consumed the same at or in his house within the said manor of B. and within two miles of the said B. mills; and the said defendants S. R. and J. T. have respectively since the death of the said J. H. purchased or obtained from divers persons divers large quantities of flour and meal or flour or meal which had not been ground at the said B. mills, and have respectively used spent or consumed the same at or in their respective houses within the said manor of B. and within two miles of the said B. mills; and that the said defendants have respectively in manner aforesaid and otherwise withdrawn and refused to do suit and soke to the said B. mills; and that they respectively ought to account for and pay and satisfy to your orators J. P., J. E., and S. P. the toll and mulcture for grinding the said corn and grain; the flour and meal whereof have been so used spent and consumed as aforesaid, in the same manner as if the same had been ground, as it ought to have been at the said B. mills; and that the said defendants have not nor has any of them accounted for or paid or satisfied such toll or mulcture or any part thereof to your said last-named orators or any of them; and that large sums of money are now due and owing to your last-named orators from the said defendants respectively in respect thereof, and so it would appear if the said defendants would respectively set forth as they ought to do, a full true and particular account of all the flour and meal respectively used spent or consumed by them respectively since the death of the said J. H. S. at or in their respective houses within the said manor of B. and within two miles of the said B. mills, and when and where and from whom they \*respectively purchased or obtained the same and each and every part thereof, and where the same and each and every part thereof had been ground, and what if any parts or part thereof had been ground at the said B. mills, and if any part or parts thereof had been ground at the said B. mills, when and for whom the same was so ground and how the defendants respectively make out the same, and their respective reasons and grounds for knowing or believing the same; and the said defendants J. B. and J. D. threaten and intend to bring or to cause to be brought into the said manor of B. and within two miles of the said B. mills, for the purpose of selling or disposing of the same to the said tenants freeholders copyholders and inhabitants within the said manor and within two miles of the said

S. they have ground corn &c. at their mill; and consumed the same in their houses within the manor and two miles of the relator's mills, and sold flour, &c. ground at their mill to the defendant J. W. and other inhabitants, which they have since consumed in their houses. That W. R. has since the death of J. H. S. bought flour, &c. not ground at the relator's mills and consumed the same in his house; (The like charged against S. R. and J. T.) That the defendants have refused to do suit and soke to the relator's mills, and ought to account for the toll so withdrawn by them; That they have not ac-

[ \*495 ] counted for or satisfied such toll, and large sums are still due from them which would appear from the accounts required. That the defendants J. B. and J. D. threaten to

bring into the manor and within two miles of the relator's mill for the purpose of selling the same to the inhabitants to be consumed therein, corn, grain, &c., and that all the defendants threaten to consume in their houses flour, &c. not ground at the relator's mills; and that they ought to be restrained therefrom. Charge as to accounts, books, &c.

VI.

Interrogatories to the statements.

B. mills to be used spent or consumed therein, divers quantities of corn grain flour malt or meal ready ground and not ground in the said B. mills, and all the said defendants threaten and intend to use spend and consume at and within their respective houses within the said manor of B. and within two miles of the said B. mills, flour and meal or flour or meal which has not been ground at the said B. mills without paying or satisfying to your orators and oratrixes or any of them the toll or mulcture for grinding the same or any part thereof, and which the said defendants ought, as the said Attorney-General and your orators and oratrixes submit, to be restrained from doing by the injunction of this honorable court. And the said Attorney-General and your orators and oratrixes further charge that the said defendants have or lately had in their or some of their possession custody or power, divers accounts books of account receipts documents vouchers memorandums papers and writings relating to the several matters aforesaid, and whereby, if produced, the truth of the matters aforesaid or some of them would appear, and which they ought to produce, but which they refuse to do.

All which actings doings and pretences of the said confederates are contrary to equity and good conscience, and tend to the manifest wrong and injury of your said relators and orators.

IN CONSIDERATION whereof and forasmuch as your said relators and orators cannot be fully relieved in the premises but in this honorable court where matters of this nature are properly cognizable and relievable,

To THE END therefore that, &c. [*Proceed as in form VI. p. 5.*]

And more especially whether on the 22d day of November 1775 or at some other and what time the said J. S. (the grandfather of your orator J. G. S.) and W. N. did not exhibit their information in the name of his Majesty's then Attorney-General of the said Duchy at their relation in this honorable court, and also their bill of complaint, against the said S. H. T. C. J. L. and W. V. or some and which of them, or some other and what persons; And whether it was not thereby stated and prayed to such purport and effect as hereinbefore in that behalf mentioned, so far as the same is herein set forth, or to some other and what purport and effect; And whether such statements or some and which of them were not true, or how otherwise; And whether such proceedings were not had and such decree pronounced in the said suit as are hereinbefore in that behalf mentioned, or what other proceedings and decrees were \*had and pronounced therein; And whether the said relator and complainant J. S. did not after obtaining the said decree continue to be so seised as aforesaid of all the said mills suit and soke with all the rights members and hereditaments thereunto belonging until the time of his death, or how otherwise; And whether he did not depart this life on the 13th day of February 1811 or at some other and what time intestate as to the same, or how otherwise; And whether he did not leave the said J. H. S. his eldest son and heir at law, or how otherwise; And whether the said J. H. S. did not thereupon become and whether he was not until the time of his death seised of the said mills suit and soke with all the rights members and hereditaments

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thereunto belonging in fee-simple at and under the aforesaid yearly fee-farm rents due and payable for the same, or how otherwise, subject as hereinbefore in that behalf mentioned or in some other and what manner; And whether the said indentures of lease and release hereinbefore mentioned to bear date the 14th and 15th days of April 1814 were not duly made and executed by and between such parties and of such date purport and effect as hereinbefore in that behalf mentioned, so far as the same are herein set forth, or were not duly made and executed by and between some other and what parties and of some other and what date purport and effect; And whether the said intended marriage was not duly had and solemnized between the said J. H. S. and your oratrix Lady E. A. S. or how otherwise; And whether there were not issue of the said marriage your orators and oratrixes hereinbefore in that behalf named, or some other and what issue, or how otherwise; And whether the indenture of demise hereinbefore mentioned to bear date the — day of — was not duly made and executed between and by such parties and of such date purport and effect as hereinbefore in that behalf mentioned, so far as the same is herein set forth, or was not duly made and executed between and by some other and what parties and of some other and what date purport and effect; And whether by virtue of such demise your orators J. P., J. E., and S. P. did not on the — day of —, or at some other and what time enter upon and take possession of the said mills and premises; And whether they have not ever since held and enjoyed, and whether they do not still hold and enjoy the same under the said demise, or how otherwise; And whether they are not entitled so to do or to receive the profits thereof, or how otherwise; And whether the said J. H. S. did not depart this life on the — day of —, or at some other and what time; And whether or not intestate as to the said mills suit and soke and all the rights members and appurtenances thereto belonging, or how otherwise; And whether he did not leave your orator J. G. S. his eldest son and heir at law, your oratrix Lady E. A. S. his widow, and your orators and oratrixes hereinbefore in that behalf named his younger children, him surviving, or how otherwise; And whether the said J. H. S. did not by his last will and testament in writing dated the — day of — 1820 or of some other and what date appoint your oratrix Lady E. A. S. the guardian of the persons of your orators and oratrixes her children; And whether he did not thereby appoint your orators G. W. then G. S. and G. W. A. the guardians of the estates of his said children, \*and whether or not also the executors of his said will, or how otherwise; And whether they or some or one and which of them have or has not since duly proved the said will in the proper or some and what Ecclesiastical Court; And whether upon the death of the said J. H. S. the said mills suit and soke and all the rights members and hereditaments thereunto belonging did not descend upon your orator J. G. S. as such eldest son and heir at law as aforesaid, or how otherwise; And whether he did not thereby become and whether he has not ever since been and is not still seised of the said mills suit and soke and the rights members and hereditaments thereunto belonging, in fee-simple subject as hereinbefore in that behalf mentioned, or how

[ \*497 ]

otherwise ; And whether ever since the said decree of the 31st day of January 1782 the said annual fee-farm rents have not been paid and satisfied by or on the behalf of the said relator J. S. and the said J. H. S. and your orator J. G. S. or how otherwise ; And whether the said water corn-mills and premises or such of them as are sufficient for the suitors thereto have not ever since such decree been kept and whether they are not now in good repair and condition, or how otherwise ; And whether millers servants loaders and horses sufficient to do attend to and despatch the business and duty of the said water corn-mills have not been retained and kept and are not now by your orators and oratrixes or some of them retained kept and paid to do the business of the said water corn-mills, or how otherwise ; And whether the said B. mills are not now and whether the same have not been ever since the making of the said decree sufficient to grind all such corn grain and malt of the said tenants freeholders copyholders and inhabitants within the said manor and within two miles of the said mills which by them may be expended or used ground in their said manor and within two miles of the said mills, or how otherwise ; And whether the said W. R., S. R., J. W., J. B., J. D. and J. T. or some or one and which of them have or has not been ever since the death of the said J. H. S. and are or is not now tenants freeholders copyholders residents and inhabitants tenant freeholder copyholder resident or inhabitant within the said manor of B. or how otherwise ; And whether they or some or one and which of them have or has not ever since the death of the said J. H. S. or from some other and what time lived and resided, and whether they or some or one and which of them do or does not now live and reside, within two miles of the said mills so belonging to your relator and orator J. G. S. as aforesaid, or how otherwise ; And whether the said defendants or some or one and which of them have or has not brought or caused to be brought into the said manor of B. and whether or not within two miles of the said mills for the purpose of selling or disposing of the same or some and what part thereof to the tenants freeholders copyholders and inhabitants or some and which of them or some other and what persons within the said manor of B. and whether or not within two miles of the said B. mills or some of them to be used and spent or consumed therein or for some other and what purpose large or some and what quantities or quantity of corn grain flour malt and meal or some and which of them ready ground, and whether or not which had not been ground at the said B. mills, or how otherwise ;

[ \*498 ] And whether they or some or one and which of them \*have or has not sold or disposed of the same or some and what part thereof to the said tenants freeholders copyholders and inhabitants or some or one and which of them, or some other and what persons or person, or how otherwise ; And whether the said defendants or some or one and which of them have or has not since the death of the said J. H. S. used spent and consumed at or in their or some or one and which of their houses within the said manor of B. and whether or not within two miles of the said B. mills divers large or some and what quantities or quantity of flour and meal or flour or meal which had not been ground at the said B. mills, or how otherwise ; And whether

the said J. B. and J. D. or one and which of them have or has not ever since the death of the said J. H. S. been and are or is not now the occupiers of a corn-mill situate in the township of H. aforesaid, or how otherwise; And whether the said township is not near to and whether the same is within the manor of B. or within two miles of said B. mills, or how otherwise; And whether the said last-named defendants or one and which of them have or has not since the death of the said J. H. S. ground or caused to be ground large or some and what quantities or quantity of corn and grain at their said mill at H. or elsewhere and where, and whether or not made large or some and what quantities or quantity of flour and meal flour or meal therefrom, or how otherwise; And whether the said last-named defendants or one and which of them have or has not since the death of the said J. H. S. used spent and consumed large or some and what quantities or quantity of the flour and meal flour or meal so ground at their said mill as aforesaid or elsewhere and where, at or in their or his houses or house within the said manor of B. and whether or not within two miles of the said B. mills, or how otherwise; And whether the said last-named defendants or one and which of them have or has not sold or disposed of large or some and what quantities or quantity of flour and meal flour or meal, or other parts of the said flour and meal flour or meal as aforesaid ground at their said mill at H. aforesaid or elsewhere and where, to the said defendant J. W.; And whether or not to some and what other tenants freeholders copyholders and inhabitants or some other and what persons or person within the said manor of B., and whether or not within two miles of the said B. mills to be used spent or consumed therein, or how otherwise; And whether the said J. W. and whether or not some and what other tenants freeholders copyholders and inhabitants or some other and what persons or person within the said manor of B. and whether or not within two miles of the said B. mills, have or has not used spent and consumed such flour and meal flour or meal or some and what part thereof at or in their or his houses or house within the said manor of B., and whether or not within two miles of the said B. mills or how otherwise; And whether the said W. R. has not since the death of the said J. H. S. bought or obtained from the said W. S. and whether or not from various or some and what other persons or person divers large or some and what quantities or quantity of flour and meal flour or meal which had not been ground at the said B. mills, or how otherwise; And whether he has not used spent or consumed the same or some and what part thereof at or in his house-  
 \*within the said manor of B., and whether or not within two miles of the said B. mills, or how otherwise; And whether the said S. R. and J. T. or one and which of them have or has not since the death of the said J. H. S. purchased or obtained from divers or some and what persons or person large or some and what quantities or quantity of flour and meal flour or meal which had not been ground at the said B. mills, or how otherwise; And whether they or one and which of them have or has not used spent or consumed the same or some and what part thereof at or in their or one and which of their houses or house within the said manor of B. and whether or

[ \*499 ]

not within two miles, of the said B. mills, or how otherwise ; And whether the said defendants or some or one and which of them have or has not in manner aforesaid, and whether or not in some other and what manner, withdrawn and refused to do suit and soke to the said B. mills, or how otherwise ; And whether they or some or one and which of them ought not to account for and pay and satisfy to your orators J. P., J. E. and S. P. or some or one and which of them the toll and mulcture for grinding the said corn and grain, the flour and meal whereof have been so used and spent or consumed by them as aforesaid, in the same manner as if the same had been ground at the said B. mills, or how otherwise, and if not why not ; And whether the said defendants or any and which of them have or has accounted for or paid or satisfied such toll or mulcture or any and what part thereof to your said last named orators or any and which of them, and if yea, when where and how and to whom ; And whether large or some and what sums or sum of money are or is not now due and owing to your said last-named orators or some or one and which of them in respect thereof, or how do the defendants make out the contrary ; And that the said defendants may set forth a full true and particular account of all the flour and meal respectively used spent or consumed by them respectively since the death of the said J. H. S. at or in their respective houses within the said manor of B. and within two miles of the said B. mills, and when and where and from whom they respectively purchased or obtained the same and each and every part thereof, and where the same and each and every part thereof had been ground, and what if any parts or part thereof had been ground at the said B. mills, and if any parts or part thereof had been ground at the said B. mills, when and for whom the same was so ground, and how the defendants make out the same, and their respective grounds for knowing or believing the same ; And whether the said defendants J. B. and J. D. or one and which of them do or does not intend or threaten to bring or cause to be brought into the said manor of B., and whether or not within two miles of the said B. mills, for the purpose of selling or disposing of the same to the said tenants freeholders copyholders and inhabitants within the said manor of B. and whether or not within two miles of the said B. mills to be used spent or consumed therein, divers large or some and what quantities or quantity of corn grain flour malt and meal or corn grain flour malt or meal ready ground and not ground at the said B. mills or how otherwise ; And whether all the said defendants or some or one and which of them do or does not intend or threaten to use spend \*or consume at and within their or some or one and which of their houses within the said manor of B. and whether or not within two miles of the said B. mills, flour and meal or flour or meal which had not been ground at the said B. mills ; And whether or not without paying or satisfying to your orators and oratrixes or any of them the toll or mulcture for grinding the same or any part thereof, or how otherwise ; And whether the said defendants or some or one and which of them have or has not now or had not lately or at some time and when last in their or some or one and which of their possession or power divers or some and what accounts books of account

[ \*500 ]

Interrogatory  
for a discovery  
of the ac-  
counts, books  
of account,  
&c.



receipts documents vouchers memoranda papers and writings account book of account receipt document voucher memorandum paper or writing relating to the matters aforesaid or some and which of them; And that the said defendants may set forth a full true or particular list or schedule of all the said accounts books of account receipts documents vouchers memoranda papers and writings account book of account receipt document voucher memorandum paper and writing which now are or is or ever were or was in their or any of their possession or power, distinguishing such of them as now are or is in their or any of their possession or power, and that they may set forth what have or has become of such of them as are or is no longer in their or any of their possession or power; And that they may leave such of them as are or is in their respective possession or power in the hands of their respective clerks in court for the usual purposes.

And that the said defendants may answer the premises; And that the said defendants may be restrained by the injunction of this honorable court from buying or bringing in to the said manor of B. and within two miles of the said mills for the purpose of selling or disposing of the same to any of the said tenants freeholders copyholders or inhabitants within the said manor of B. and within two miles of the said B. mills to be used spent or consumed therein, any corn grain flour malt or meal ready ground, and from consuming or using the same or any part thereof at or in their respective house or houses within the said manor of B. and within two miles of the said B. mills; And that they may be in like manner restrained from using spending or consuming at or in their said respective houses or any of them any corn malt or other grain flour or meal which have or hath not been ground at the said B. mills; And that an account may be taken by and under the decree of this honorable court of all the corn grain flour and meal used spent or consumed by them respectively as aforesaid at or in their respective houses which according to the said custom ought to have been ground at the said B. mills, since the death of the said J. H. S., and that upon such account being taken, the clerk of the council of this honorable court or his deputy may be directed to compute and set a value upon the toll or mulcture of such corn grain and malt flour and meal not ground at the said B. mills; and that what shall be found to be the value or amount of the toll or mulcture of such corn grain and malt flour and meal may be decreed to be paid by the said defendants respectively to your orators J. P., J. E. and S. P.; And that your orators may have such further and other relief in the premises as the nature and circumstances of their case may require and to your lordship shall seem meet. May it please, &c. [see forms No. 1 and 4, p. 6.]

Prayer.

[ \*501 ]

*Pray subpoena and injunction against  
J. B., J. D., W. R., S. R., J. W.,  
and J. T.*

## \*CHAPTER VII.

## PETITIONS.

*\*I. Petition by an infant for the appointment of a guardian and allowance of maintenance.*

In Chancery.

Between J. D. and W. T., . . Plaintiffs,  
 and  
 W. W., R. Q., T. D., an infant, by  
 B. T. his guardian, and the Governors  
 and Directors of the South Sea Com-  
 pany, . . . . Defendants.

To the Right Honorable the Master of the Rolls.

The humble Petition of the said Plaintiff W. T. an infant.

Showeth,

Will of T. D.,  
 bequeathing a  
 legacy of  
 stock in trust  
 for the peti-  
 tioner.

That T. D. the testator in the pleadings of this cause named by his will bearing date the — day of September —, amongst other legacies and bequests therein contained gave and bequeathed unto W. W. and R. Q. his executors therein named £700 South Sea Annuities, Upon trust, &c. [*stating shortly the will, the proceedings in the cause, and the order made on further directions.*]

Death of E. T.  
 before the or-  
 der was pro-  
 nounced.

That the said E. T. departed this life before the said decretal order of the 7th of February 1787 was pronounced.

The stock  
 transferred  
 into the Ac-  
 countant-  
 General's  
 name, and the  
 dividends ac-  
 crued thereon  
 paid into the  
 Bank, to the  
 petitioners ac-  
 count.

That the said defendants W. W. and R. Q. did accordingly transfer to the said Accountant-General of this court the said sum of £700 South Sea Annuities, and did also pay unto the said Bank with the privity of the said Accountant-General the sum of £—, being the dividends which had accrued thereon since the death of the said E. T. to the time of the said transfer, and which said principal sum and the dividends accrued due thereon are now remaining in the Bank with the privity of the said Accountant-General, and placed to the credit of this cause to the account of your petitioner.

The petitioner  
 entitled to the  
 dividends of

That your petitioner is the only child of the said E. T. deceased, and is now of the age of —, and entitled to the dividends of the said £700 South Sea Annuities for his maintenance and education during his minority, and to the said principal money on his attaining \*the age of twenty one years, under the will of the said testator T. D.

[ \*503 ]  
 the stock for  
 his mainten-  
 ance during  
 his minority  
 and to the  
 principal on

That your petitioner is destitute of all support, and has no person to clothe educate and maintain him, the said defendants W. T. and R. Q. as executors of the said testator having no fund or property in their hands so to do, and having already advanced and paid or engaged to advance and pay several sums of money for the necessary support of your petitioner.

That the said plaintiff J. D. is the uncle and only relation of your petitioner, and is willing and desirous of becoming your petitioner's guardian, and to take care of your petitioner.

Your petitioner therefore humbly prays your honor that the said plaintiff J. D. may be appointed your petitioner's guardian; and that he may be paid the said sum of £—, paid into the said Bank as aforesaid, as the dividends of the said £700 stock accrued due between the death of the said E. T. and the time of transferring the same into the name of the Accountant-General, and also the dividends which have accrued due since the said transfer, and which may accrue due on the said £700 South Sea Annuities during the minority of your petitioner, for the purpose of enabling the said J. D. to clothe educate and maintain your petitioner.

And your petitioner shall ever pray, &c.

his attaining twenty-one.  
The petitioner destitute of support.  
The plaintiff J. D. willing to become the petitioner's guardian.  
Prayer.

*\*II. Petition by an infant who had married, all his guardians appointed under the will of his father having died, except one who refused to act; praying for a reference to a Master to appoint another guardian, and to consider as to the propriety of a part of the principal of the infant's fortune being applied for the purpose of establishing him in business, and also as to the proportion of the income of his fortune to be allowed him during his minority. The will contained a clause authorizing the trustees and guardians to apply one-fourth of the principal of the infant's fortune for his advancement, under which power a premium had been paid on the infants being apprenticed.*

In Chancery.

In the matter of B. F. an infant.

To the Right Honorable the Master of the Rolls.

The humble petition of the above-named Infant B. F. of, &c.

Showeth,

That B. F. late of — deceased, the late father of your petitioner, was at the time of his death possessed of or entitled to a considerable personal estate, and that he duly made and \*published his last will and testament in writing bearing date —, whereby after giving some specific and pecuniary legacies, he gave and bequeathed the residue of his personal estate unto C. J. of, &c. lately deceased, J. A. of, &c. and J. F. of, &c. also since deceased, in the words and figures following (that is to say): "And after all my just debts funeral charges and reasonable expenses of carrying this my last will and

Will of the petitioner's father, bequeathing his residuary personal estate to C. J., J. A., and J. F., in trust to be divided into five parts be-

[ \*504 ]

tween his widow and his children, M., S., E., and the petitioner, with benefit of survivorship between the children.

The interest of the widow's one-fifth to be paid to her during her life, and the first six months' interest to become due after her death to be subject to her disposal, and the principal to be divided between the testator's son J. and his other four children.

Direction to the trustees to apply part of the interest of the petitioner's share for his maintenance, and the surplus to be paid to the

[ \*505 ]

widow during his minority, or in case of her death, to be laid out to accumulate.

testament into execution are defrayed, I give and devise in trust unto the above-named C. J., J. A. and J. F. all my stock in trade money book-debts securities and all other property and effects whatsoever, that may belong to or be due to me at my decease (except such things or money as are specifically devised) for the uses and purposes following (that is to say:) That they the said devisees do, as soon after my decease as may be prudently possible, dispose of all my said effects to the best advantage, and invest the moneys arising therefrom in the most eligible government securities, the whole to be divided into five equal fifth parts between my wife A. and my daughters M., S. and E. and my son B.; and if either or any of them die before attaining the age of twenty one-years or without having lawful issue, the respective share or shares of each to be equally divided among the survivors, in the same manner as the original sums are limited, the said shares to be paid or transferred within nine months after my death to such of my said children as may be of the age of twenty-one years, and to the others as they severally attain that age; and I do will and direct that if I should die before my daughter E. attains the age of twenty-one years, that my said devisees would pay such a portion of the interest arising from her share as may be proper for her maintenance and instruction, and the surplus to be added from time to time to the principal, and paid to her on her coming of age, or divided as above in case of her decease; and I will and direct that the interest and profit of the said fifth or greater share or part of the amount of my effects as before devised for the benefit of my wife Ann, be paid to her from time to time as the same becomes due for and during the term of her natural life, and that likewise the first six months' interest, &c. that becomes due after her decease shall be subject to the payment of her funeral and other necessary charges or her testamentary disposal, and after that period the principal sum to be divided (subject to the above regulations) between my son J. and my other four children or their lawful issue in five equal shares, one share only to the representatives of each; and I will and direct that my said trustees do allot and pay out of the portion devised as above to my said son B. such an annual sum during his nonage as may be proper for his maintenance and education and instruction in such business or calling as may be expedient; and that the surplus and remainder of such yearly interest as may be left after such allotment, be paid from time to time as it becomes due, to my wife A. for her own use and behoof until the said B. attains the age of twenty-one years, but if his mother dies before that time, then such surplus to be added to his own principal sum; and I do hereby will and direct and empower my said devisees, that if at any time previous to my said son B. attaining the age of twenty-one years, any opportunity offers, that upon good grounds should promise to be particularly beneficial towards establishing him in life, to advance any sum not exceeding the fourth part of what he may at the time be entitled to by this my will to answer such purpose, and they are hereby indemnified and exonerated from all demands on account of such advances, from any person or persons claiming any benefit by this my will; provided always that my said son and his guardians

agree to approve of such advance." And the said testator appointed the before-named C. J., J. A., and J. F. executors of the said will, and the said persons together with his said wife Ann guardians of such of his children as might be under age at the time of his decease. As by the probate of the said will when produced to this honorable court will appear.

That the said testator B. F. departed this life on —, and without having revoked or altered his said will, leaving A. F. his widow since deceased, and J. F., M. F., S. F. and E. F. and your petitioner all named in his said will, his only children, who have all excepting your petitioner long since attained their ages of twenty-one years, and also leaving the said C. J., J. A., and J. F. him surviving.

That shortly after the said testator's death, the said C. J. and J. F. duly proved the said testator's said will in the proper Ecclesiastical Court, and thereby became his legal personal representatives, but that the said J. A. declined to prove the said will or to act as one of the guardians of your petitioner, or in any manner to execute the trusts of the said testator's will.

That the said testator's daughter M. F. is still unmarried, and that the said S. F. intermarried with and became the wife of W. W. N., and that she died on or about —, and the said E. F. on or about — intermarried with and is now the wife of J. E. S. of, &c.

That the said testator's widow after his death intermarried with J. O. of, &c. and that she died on —.

That the said C. J. and J. F. (the executors) got in the said testator's personal estate and paid his debts, and that the several shares of the said M. F., S. N., and E. S. of and in the said testator's residuary personal estate to which they were entitled at the said testator's death, have been ascertained and paid to them, and the shares of the said J. F., M. F., E. S. and of the issue of the said S. N. deceased of and in the said one-fifth part or share of the said residuary estate bequeathed to the said testator's widow for her life, have also been ascertained and duly accounted for or paid to them.

That the said C. J. and J. F. (the executors) have severally departed this life, and that the said J. F. the son obtained letters of administration of the said testator's effects left unadministered, with his will annexed, to be granted to him out of the proper Ecclesiastical Court.

That under and by virtue of the said testator's will, your petitioner became upon the death of the said testator entitled to one-fifth part or share of the said testator's residuary personal estate, and that upon the death of your petitioner's mother the said testator's widow, your petitioner became also entitled under the said testator's will to \*one-fifth of the one-fifth share of the said residuary estate bequeathed for the benefit of the said testator's widow, subject as to both of those shares to be divested in case your petitioner should die before attaining the age of twenty-one years, or without having lawful issue.

That in the month of — the sum of £157 was paid with the consent of your petitioner and of the said J. F. (the said C. J. being then dead) and your petitioner's mother his acting guardians, out of

Power to the trustees to apply one-fourth of the principal of the petitioner's share for the purpose of establishing him in life.

C. J., J. A., and J. F. appointed executors; and together with the widow, guardians of the infant children.

Death of the testator; All his children of age except the petitioner.

That C. J. and J. F. proved the will, but that J. A. declined to prove or to act as guardian or trustee,

One daughter unmarried; Marriage of two other daughters, and death of one of them.

Marriage of the testator's widow and her death.

That C. J. and J. F. got in the personal estate and paid the debts;

that the shares to which the daughters were entitled at the testa-

[ \*506 ]  
tor's death, were paid to them; and the shares of the parties entitled to the widow's one-fifth share du-

ly accounted for.

Death of the acting executors, and administration with the will annexed granted to J. F. the son.

Statement of the shares to which the petitioner is entitled.

A premium paid with the petitioner on his being apprenticed to an ironmonger ;

The indentures since given up and cancelled.

The amount of the shares to which the petitioner is entitled ;

His marriage and desire to commence business ;

And proposal to have the residue of the one-fourth of his fortune applied for establishing him in life ; and the whole income of his fortune allowed for his maintenance until he attains twenty-one.

[ \*507 ]

That all his guardians having died except J. A. who refuses to act, another guardian ought to be appointed.

Prayer.

your petitioner's said one-fifth share of the said residuary estate as a premium for apprenticing your petitioner to a Mr. R. an ironmonger and the expenses attending thereon, and that at your petitioner's earnest request the said Mr. R. has given up the said indentures, and allowed them to be cancelled.

That your petitioner's shares in the said testator's residuary personal estate to which he became entitled both at the death of the said testator and at the death of the said testator's widow, now consist of the sum of £1800 new 4 per cent. annuities, standing in the name of the said J. F. in the books of the Governor and Company of the Bank of England, and of the sum of £—— cash in the hands of the said J. F.

That your petitioner on or about —— intermarried with S. S., and that your petitioner is desirous of commencing the business of —— in order to support himself in life.

That for that purpose your petitioner submits that he ought to be permitted to have the residue of the one-fourth part of the fortune to which your petitioner is now entitled under the said testator's will, after deducting the sum so advanced for apprenticing your petitioner as aforesaid, inasmuch as the said testator by his said will authorized the said executors and guardians appointed by his said will to advance one-fourth of your petitioner's fortune for establishing him in life, and your petitioner submits that he ought to be allowed the whole of the income arising from his said fortune for his maintenance, until your petitioner shall attain his age of twenty-one years.

That all the said guardians of your petitioner appointed by the said testator's will having died except the said J. A. who has ever since the said testator's death refused to act in any manner under the said will, your petitioner submits that a guardian ought to be appointed, with directions to pay to your petitioner the whole of the income of your petitioner's fortune for his maintenance and support.

Your petitioner therefore most humbly prays your honor that it may be referred to one of the Masters of this honorable court to approve of a proper person to be appointed the guardian of your petitioner ; and that it may also be referred to the said Master to inquire and state to the court whether it will be fit and proper that any and what part of the principal of your petitioner's fortune should be applied for establishing him in life ; and also to approve of a proper sum to be allowed for the maintenance of your petitioner out of his said fortune during his minority, and to state from what time the same ought to be allowed ; and that all necessary directions may be given for effectuating the purposes aforesaid, or that your honor may be pleased to make such further or other order as to your honor shall seem meet.

And your petitioner shall ever pray, &c.

*\*III. Petition by an infant, praying that the Master's report made pursuant to an order upon a former petition by the infant(1) may be confirmed, approving of a guardian for the infant, allowing a sum to be raised for establishing the infant in business, and the whole interest of his fortune for his maintenance, from the death of his mother; the petition also prays for a reference to the Master to tax the costs of the petitioner, and all other persons concerned, and to have the same raised and paid.*

In Chancery.

In the matter of B. F. an Infant.

To the Right Honorable the Master of the Rolls.

The humble Petition of the above-named Infant B. F. of, &c.

Showeth,

That by an order of this court made in this matter on the petition of the above-named infant bearing date on or about —, It was ordered that it should be referred to the Master in rotation G. D. Esq. to approve of a proper person or persons to be appointed guardian or guardians of the said petitioner during his minority or until the further order of the court, and all proper parties were to have notice to attend the said Master thereon, and were to be at liberty to propose such guardian or guardians; and it was ordered that the said Master should state to the court the said petitioner's age and the nature and amount of his fortune, and what relations he had, and on what evidence or ground the said Master approved of any particular person or persons to be such guardian or guardians, and also to inquire and state to the court who had maintained and educated the said petitioner since the death of his mother, and what had been properly expended or ought to be allowed on that account; and the said Master was to consider and state to the court what would be fit and proper to be allowed for the maintenance of the said petitioner for the time to come, and out of what fund the same ought to be paid, and to consider and state to the court whether it would be fit and proper (regard being had \*to the direction in the will mentioned in the said petition for advancing part of the said petitioner's capital) that any and what part of the said petitioner's fortune should be applied for establishing him in the business of —, as in the said petition mentioned; and after the said Master had made his report, such order should be made as should be just.

That in pursuance of the said order the said Master made his report dated —, and thereby certified that he had been attended by the solicitors for all persons interested, and in their presence a state of facts and proposals having been brought in before the said Master

Statement of the order made upon the petition of the infant.

Referring it to the Master to approve of a guardian; to state the infant's age, fortune, and relations, and the ground of the Master's approval of a guardian; also to inquire who had maintained the infant since his mo-

[ \*508 ]  
ther's death, and what had been expended, and what ought to be allowed for his future maintenance, and out of what fund, and to consider whether a part of

(1) Vide antea, p. 503.

his fortune should be applied for establishing him in business.

Statement of the Master's report,

Approving of J. F. as guardian of the infant;

also stating the age of the infant;

and the amount of his fortune;

that since the death of his mother he had been maintained by J. F. who had applied the interest of his fortune for that purpose; that it would be proper that £200 should be applied for establishing him in business, to be raised by sale of part of a sum of stock; also that the whole income of the infant's fortune should be allowed to J. F. for the infant's maintenance since the decease of his mother, and also for the time to come.

Prayer.

[ \*509 ]

on the behalf of the said petitioner, supported by the evidence therein stated, he had produced upon the said reference, and he approved of the said proposal, and on the grounds and evidences therein stated he was of opinion that J. F. therein mentioned is a proper person to be appointed guardian of the petitioner B. F. the infant during his minority, or until the further order of the court; and he found that the said infant is now in the nineteenth year of his age, and that the nature and amount of his fortune and what relations he has are such as particularly stated in the said state of facts thereinbefore stated, his fortune consisting at the death of his mother and at the present time of £1800 new 4 per cent. annuities standing in the name of the said J. F.; and he found that the said infant hath since the death of his mother (which happened on —) been maintained and supported by the said J. F., who he found had expended the amount of all the interest and dividends of the said £1800 bank annuities in such maintenance and support; and he was of opinion regard being had to the direction in the will of the said infant's father deceased for advancing part of the said infant's capital, that it will be fit and proper that the sum of £200 part of the said B. F. the infant's fortune should be applied for establishing him in the business of —, and that the said sum of £200 should be raised by sale of a sufficient part of the said £1800 new £4 per cent. annuities, and he was of opinion that it would be fit and proper that the whole of the said income arising from the said sum of £1800 new 4 per cent. annuities, the amount of the said infant's said fortune, should be allowed to the said J. F. for the maintenance of the said infant for the time past, and that the same should commence from the said — the day of the death of the said infant's mother, and he was of opinion that the dividends and interest of the residue of the said sum of £1800 new £4 per cent. annuities as shall remain after the sale of so much thereof as would be sufficient to raise the sum of 200l. to be applied for the purposes herein and thereinbefore mentioned, ought to be allowed to the said J. F. for the maintenance of the said infant for the time to come, and that the same should be paid to the said J. F. as and when such dividends shall become due and be received.

Your petitioner therefore most humbly prays your honor that the said Master's report may be absolutely confirmed, and that the said J. F. may be appointed guardian of the person and estate of your petitioner; and that the sum of £200 part of your petitioner's \*fortune may be applied for establishing him in the business of —, and that the said J. F. may be directed to raise the said sum of 200l. by sale of a sufficient part of the said sum of 1800l. new 4l. per cent. annuities; and to apply the same sum of 200l. for your petitioner in manner aforesaid; and that the whole of the income which has arisen since the death of your petitioner's mother from the said sum of 1800l. new 4l. per cent. annuities, the amount of your petitioner's said fortune, may be allowed to the said J. F. for the



maintenance of your petitioner for the time past, and that the same may commence from the said — the day of the death of your petitioner's mother; and that it may be referred back to the said Master to tax as between solicitor and client the costs charges and expenses of your petitioner and of J. F., M. F., and E. S. of and relating to your petitioner's former application and of the said reference and incidental thereto, and of this application and of the order to be made thereon and incidental thereto; and that the costs of your petitioner when taxed may be paid to Mr. — your petitioner's solicitor, and of the said J. F., M. F., and E. S. to Mr. — their solicitor, out of the said 1800*l.* new 4*l.* per cent. bank annuities, and that the same may be raised by sale of a sufficient part of the said 1800*l.* new 4*l.* per cent. annuities, and that the dividends and interest of the residue of the said sum of 1800*l.* new 4*l.* per cent. annuities as shall remain after the sale of so much thereof as will be sufficient to raise the said sum of 200*l.* for the purposes aforesaid and also the amount of the said costs and expenses, may be allowed to the said J. F. and applied by him for the maintenance of your petitioner for the time to come, and that the same may be paid to the said J. F. as and when such dividends shall become due and be received, or that your honor will be pleased to make such further or other order as to your honor shall seem meet.

And your petitioner shall ever pray, &c.

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*\*IV. Prayer of a petition by the guardian of infants for an increase of the sum allowed for their maintenance and education.*

That your petitioner humbly conceives the sums already allowed for the respective maintenance and education of the said plaintiffs to be inadequate to those purposes, regard being had to their fortunes and circumstances;

Introductory statement.

\*Your petitioner therefore humbly prays your honor that it may be referred to the said Master to consider what is proper to be further allowed in addition to what is already allowed for the maintenance and education of the said plaintiffs the infants, regard being had to their fortunes and circumstances.

[ \*510 ]  
Prayer.

And your petitioner shall ever pray, &c.

*V. Petition praying to have certain shares of stock transferred to three of the petitioners, they having attained their respective ages of twenty-one years, and that the share of another petitioner who had attained twenty-one and had married, may be transferred to her husband, together with the dividends to accrue due previously to such transfers; also that the father of the other petitioners, infants, may be allowed the dividends to become due on their shares, he being unable to maintain them.*

*(An opinion as to the necessary affidavits is added.)*

In Chancery.

Between W. W. the elder and M. his wife since deceased, Z. G. lately deceased and M. his wife, R. W. now R. and J. W. E. W., &c. &c. infants, by the said W. W. the elder their father and next friend, . . . Plaintiffs,  
and  
W. H. since deceased, J. D. W. and W. J. . . . Defendants.

To the Right Honorable the Master of the Rolls.

The humble Petition of W. W. the elder, &c. &c. above named,

Showeth,

Will of J. D.

That J. D. late of ——— duly made and published his last will and testament in writing bearing date on or about the ——— day of ——— whereby after giving, &c.

A codicil made hereto.

That the said testator after the making of his said will duly made and published a codicil thereto bearing date ———, and thereby gave certain pecuniary legacies therein mentioned, but did not by such codicil any otherwise revoke or alter his said will.

Death of the testator.

That the said testator departed this life in ——— without having revoked or altered his said will except as before mentioned, and soon after his death the said executors T. D. S. O. and the said defendant W. H. duly proved such will and codicil in the Prerogative Court of the Archbishop of C., and took upon themselves the execution thereof.

His will and codicil proved by all the executors.

[ \*511 ]

The residuary personal estate, exclusive of the testator's share in a partnership trade, invested by the executors in the funds in their

\*That in pursuance of the directions of the said will the said executors laid out and invested the clear residue or surplus of the said testator's personal estate exclusive of his said share in such co-partnership as aforesaid, in the purchase of £—— 3 per cent. bank annuities, which sum was transferred into their own names in the books of the Governor and Company of the Bank of England, and the interest or dividends arising therefrom were from time to time duly paid according to the directions of the said will to the said M. W.

That the capital of the said testator which was at the time of his

death employed in the said partnership business continued to remain and be employed in such business, and the same was carried on for the joint benefit of the said D. D. the surviving partner and the persons interested under the said mill, from the time of the said testator's death until the death of the said D. D.

That the said D. D. departed this life sometime in —, and the said partnership connexion being thereby determined, the said T. D. S. O. and the said defendant W. H. as executors and trustees under the said will, soon afterwards received the amount of the said testator's share of the capital employed in the said partnership business, and they therefore laid out and invested the same in the purchase of the sum of £—— 3 per cent. bank annuities, which with the former sum of —£. like annuities arising from the other residuary estate of the said testator, made together with the sum of —£. 3 per cent. bank annuities; and soon afterwards the said S. O. departed this life.

That the said T. D. and W. H. after the death of the said S. O. their co-executor, in breach of their trust sold out and transferred the stock or sum of £—— part of the said sum of £—— for the purpose of employing the produce in carrying on the trade or business of salt merchants in a partnership which had been agreed upon between them and one K. T. L.

That the said T. D. departed this life some time in — and the said T. D. and W. H. did not in the life-time of the said T. D. replace the said £—— trust bank annuities or any part thereof, but the said W. H. continued to employ the same for some time after the death of the said T. D., and the said W. H. then replaced the said sum of £—— 3 per cent. bank annuities, and procured the same together with the residue of the said £—— like annuities to be transferred into his own name in the books of the Governor and Company of the Bank of England.

That your petitioners M. G., R. R., J. W., E. W. &c. &c. being with your petitioner J. D. W. then and now the only children of the said testator's said daughter M. W., did with your petitioner W. W. the elder and the said M. W. their mother on or about — exhibit their bill of complaint in this honorable court against the said W. H. and your petitioner J. D. W. and W. J. who are the personal representatives of the said T. D. deceased, stating to the effect aforesaid, and praying, &c.

That by an order made in this cause bearing date on or about — it was ordered with the consent of the said defendants, that the said defendant W. H. should transfer the said sum of £—— 3 per cent. \*Bank Annuities standing in his name as aforesaid into the name and with the privity of the Accountant-General of this court in trust in this cause, and the said Accountant-General was to declare the trust thereof accordingly; and it was further ordered that the interest which should accrue on the said bank annuities when so transferred should from time to time as the same should become due be paid to the said M. W. the daughter of the said testator for her separate use during her life, or until the further order of this court; and for that purpose the said Accountant-General was to draw on the bank according to

own names, and the dividends thereof paid to M. W. during her life.

That the capital employed by the testator in trade was permitted to remain until the death of the surviving partner; his death; the testator's share thereupon ascertained, and invested in the funds;

death of one of executors; the survivors sold out part of the trust stock, and applied the same in their trade; death of another executor; the survivor afterwards replaced the stock sold out.

Bill filed by the petitioners against the surviving executor and others;

order made directing the transfer of the

[ \*512 ] trust fund into the Accountant-General's name, and the dividends thereof to be paid to M. W. during her life;

no decree  
made;  
death of M. W.

the form prescribed by the act of parliament and the general rules and order of this court in that case made and provided.

That no decree hath yet been made in the said suit, and that the said M. W. the daughter of the said testator departed this life on or about —, having in pursuance of the aforesaid order received the interest and dividends of the said sum of —*l.* until the time of her death.

Three of the  
petitioners  
having attained  
twenty-one  
are entitled to  
one-tenth  
share each;  
the father of  
the other peti-  
tioners enti-  
tled to have  
the dividends  
of their share  
paid to him  
for their main-  
tenance.

That your petitioners M. G., R. R., &c. having respectively attained their ages of twenty-one years are, as they are advised, entitled each to one-tenth share of the said sum of —*l.* 3 per cent. bank annuities without prejudice to their interests in the said suit; and your petitioners J. W., E. W., &c. the only other children of the said M. W. being still infants, your petitioner W. W. the elder is entitled to have the interest and dividends of their respective tenth shares of the said sum of —*l.* stock paid to your said petitioner for their respective maintenance and education, until they shall severally attain their ages of twenty-one years.

That your petitioner M. G. attained her age of twenty-one years on —, and hath survived her late husband the said plaintiff Z. G.

The petitioner  
R. R. desirous  
that her share  
should be  
transferred to  
her husband.

That your petitioner R. R. attained her age of twenty-one years on —, a short time previously to which she intermarried with your petitioner E. R. and that no settlement of the share and interest of your petitioner R. R. in the said sum of stock hath been made; and your petitioner R. R. is desirous that her said one-tenth share of the said sum of stock may be transferred to your petitioner E. R.

That your petitioner J. D. W. attained his age of twenty-one years on or about —.

Prayer.

Your petitioners therefore humbly pray your honor that the sum of —*l.*, being one-tenth part or share of the said sum of —*l.* 3 per cent. Bank Annuities, may be transferred to your petitioner M. G., and that the like sum of —*l.* may be transferred to your petitioner E. R., and that the like sum of —*l.* may be transferred to your petitioner J. D. W.; and that your said petitioners may be paid one-tenth part or share of the dividends which shall accrue due on the said stock previously to such transfers. And that your petitioner W. W. the elder may from time to time be paid the dividends of the said remaining shares of the said sum of stock so long as your other petitioners respectively shall continue infants, to be by him applied \*for their several maintenance and education; or that your petitioners may have such further and other relief as the nature of the case may appear to require and to your honor shall seem meet.

And your petitioners shall ever pray, &c.

[ \*513 ]

*Opinion.*—There must be affidavits of the petitioners M. G. &c. being the only children of M. W., of the three petitioners M. G., R. R., and J. D. W. having attained their ages of twenty-one, of the

death of the said M. W., of the death of the said Z. G., and of the marriage of R. R., and that the petitioner W. W. the elder is not of ability to maintain the children ; R. R. must be present in court and pray that the stock may be transferred to her husband. The suit is abated, and there may be doubts made about the petition, but being for the payment of money it may be hazarded. The defendants must be served with the petition.

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**\*\*VI.** *Petition praying a transfer and payment of certain sums which had been carried over to the separate account of a married woman, and also of all further sums to become payable to her ; she and her husband being resident abroad, a commission is prayed to take her consent to the prayer of the petition. The wife being entitled under the will of her father to one seventh share of the produce of certain estates sold under the decree of the court, her husband assigned the same to W. T. upon trusts to pay a debt of £3000 ; W. T. afterwards assigned over the debt and security to the petitioner R. O. for securing a larger debt due from himself, and subsequently became bankrupt ; upon a reference to arbitration directed by the court, the arbitrator declared R. O. to be a mortgagee, and that he should be considered the purchaser of the security assigned to him at the sum fixed by the award to be the value thereof, for the purpose of ascertaining the amount of debt in respect of which he was to tender his proof under the commission of bankrupt against W. T.* [ \*514 ]

In Chancery.

Between T. D. the elder since deceased,  
T. D. the younger [*stating all  
the names*] . . . Plaintiffs,  
and  
J. P. and L. his wife, [*also stating  
all the names*] . . Defendants,

And between the said T. L. and L. his wife,  
Plaintiffs,  
and  
The said T. D. and others, Defendants.

By original and amended bills  
and bill of revivor.

To the Right Honorable the Master of the Rolls.

The humble Petition of R. O. of — and the said defendants J. P.  
and L. his wife,

Showeth,

That N. C. deceased, the testator in the pleadings of this cause

Will of N. C. devising all his estates to his wife A. C. for life, and after her death, the same to be sold, and the produce divided amongst his seven daughters.

[ \*515 ]

Death of the testator without revoking his will.

Marriage of one daughter L. C. with the petitioner J. P. who became in her right entitled to her one-seventh share.

Death of the testator's widow.

Decree made, declaring the will well proved, and directing the estates to be sold, the purchase-moneys to be paid into court, and an account to be taken of all incumbrances.

The Master to be at liberty to make a separate report respecting the incumbrances.

Sale of the testator's estates, and the sums produced thereby.

Assignment made to W. T. by the petitioner J. P. of the share to which he, in

named, in and by his last will and testament bearing date the — day of March —, after directing the payment of all his debts, gave and devised unto his wife A. C. all and every his freehold copyhold and leasehold messuages or tenements lands and hereditaments with their appurtenances, situate in the parishes therein mentioned or elsewhere, whereof he was seised possessed of or entitled unto, To hold the same unto his said wife A. C. for her life; and from and after her decease, he directed that the same premises should be sold, and the net moneys arising by the sale thereof should be equally divided and paid to between and amongst his \*seven daughters, E., A., S., M., J., L., and D., share and share alike.

That the said testator died soon after making and publishing his said will without revoking or altering the same, leaving his said seven daughters him surviving.

That the said L. C. intermarried with your petitioner the said defendant J. P., who became in right of his said wife the said defendant L. J. seised and possessed of or otherwise well entitled in reversion expectant upon the death of the said A. C., unto a seventh part or share of the said estates of the said N. C. or of the moneys to arise from the sale thereof.

That the said A. C. the said testator's widow died on or about the — of — 1811.

That by the decree made on the hearing of this cause bearing date the — of — 1813, it was declared that the will of the said testator was well proved, and that the same ought to be established and the trusts thereof performed and carried into execution. And it was (amongst other things) ordered, that the said testator's estates should be sold with the approbation of S. C. C. esq. one of the Masters of this court with the usual directions. And that the several purchasers should pay their respective purchase-money into court in the name and with the privity of the Accountant-General of the said court in trust in this cause; and that the said Master should take an account of the several incumbrances affecting the said estates, and the principal and interest due thereon.

That by a subsequent order made in this cause, bearing date the — day of — 1813, it was ordered that the said Master should be at liberty to make a separate report respecting the said incumbrances.

That in pursuance of the said decree, those parts of the said testator's estates which were situate in the counties of E. and M. were sold before the said Master, and produced in the whole the sum of £30,300; and the other parts of the said estates which were situate at K. in the county of Y. were also sold in like manner, and produced in the whole the sum of £3150.

That by a certain indenture of assignment bearing date the — of — 1818, and made between your petitioners the said defendants J. P. and L. his wife of the one part, and W. T. of — of the other part, after reciting the several matters aforesaid; and that your petitioner J. P. was then indebted unto the said W. T. in the sum of £3000 for moneys lent and advanced by the said W. T. and

moneys paid for the use of your petitioner J. P. ; and that for securing unto the said W. T. the payment of the said sum of £3000 and interest, your petitioner J. P. had proposed and agreed to assign the part or share of your petitioners J. P. and L. his wife or of your petitioner J. P. in her right, of and in the said sums of £30,300 and £3150 and all other the money arisen and produced and to arise and be produced from the real and personal estate of the said N. C. deceased, under or by virtue of the said recited will, unto the said W. T. upon the trusts and in the manner thereafter mentioned, to which proposal the said W. T. had agreed ; It is witnessed that in pursuance of the said agreement, and for securing \*the payment of the said sum of £3000 with interest for the same, and for the nominal consideration therein mentioned, your petitioner J. P. did grant bargain sell assign transfer and set over unto the said W. T. his executors administrators and assigns, All that the part or share of your petitioners J. P. and L. his wife, or of your petitioner J. P. in her right, of and in the said sums of £30,300 and £3150 and all other the money arisen and produced and to arise and be produced from the real and personal estate of the said N. C. deceased, under or by virtue of his said will or otherwise however, and all interest moneys then due and thenceforth to become due and payable in respect thereof, To hold the same unto the said W. T. his executors administrators and assigns, upon the trusts and to and for the intents and purposes thereafter expressed and declared of and concerning the same, (that is to say ; ) Upon trust that the said W. T. his executors administrators and assigns should out of the said part or share moneys and premises when the same should be received pay the cost of preparing the said indenture and of executing the trusts thereof, and after payment and satisfaction of all such costs charges and expenses, Upon trust to retain pay and satisfy unto himself the said W. T. his executors administrators and assigns the said sum of 3000*l.* together with all interest which should be due thereon at the rate of 5*l.* per cent. per annum to be computed from the day of the date of the said indenture ; and as to the residue and surplus of the said part or share moneys and premises thereinbefore mentioned to be thereby assigned, (if any there should be,) In trust for your petitioner J. P. his executors administrators and assigns. And for the considerations aforesaid, and the better to enable the said W. T. his executors administrators and assigns to recover and receive the said part share moneys and premises thereinbefore mentioned and intended to be thereby assigned, your petitioner J. P. did by the said indenture make ordain nominate constitute and appoint the said W. T. his executors administrators and assigns his true and lawful attorney and attorneys jointly and severally irrevocably, in his or their name or names or in the names or name of your petitioners J. P. and L. his wife or either of them, but for the purposes thereinbefore mentioned, to ask demand sue for recover and receive of and from the Accountant-General of this honorable court and of and from all and every other person or persons liable or entrusted to pay the same, the said part or share moneys and premises, and to use and take all legal and equitable means for the recovery and receipt thereof ; and upon re-

right of his wife, was entitled in the purchase-moneys and otherwise under her father's will,

[ \*516 ]

Upon trust thereof to pay the cost of the security and of executing the trusts, then to pay himself a debt of £3000 with all interest to accrue due,

and the surplus to be paid over to J. P.

Power of attorney to W. T. to receive and recover the moneys assigned, and to institute any proceedings, and to apply by petition or otherwise.

ceipt thereof or any part thereof, to make and sign receipts and acquittances or other sufficient discharges, and to do all other acts necessary or expedient in the premises as fully as your petitioner T. P. could have done; and also that it should and might be lawful to and for the said W. T. his executors administrators and assigns to apply by motion petition or otherwise to this honorable court, for the purpose of enabling him or them to obtain an order for payment of the said part or share moneys and premises, and for carrying the said indenture into execution.

Assignment made to W. D. by W. T. of the debt of 3000*l.* due to him.

[ \*517 ]

Upon trust for securing a debt of 2500*l.* due from W. T. to W. D. with interest;

That by a certain indenture of assignment bearing date the — day of — 1819, and made between the said W. T. of the one part, \*and W. D. of — of the other part, reciting the hereinbefore stated indenture, and that the said W. T. was indebted unto the said W. D. in the sum of 2500*l.*; and for securing the payment thereof with interest had agreed to assign the said debt of 3000*l.* unto the said W. D. upon the trusts and in manner thereafter mentioned; It is by the now stating indenture witnessed that for the consideration therein mentioned, the said W. T. did grant bargain sell assign transfer and set over unto the said W. D. his executors administrators and assigns, All that the said debt or sum of 3000*l.* and all interest then due or thereafter to become due thereon, and all benefit and advantage thereof, and all sum and sums of money to become due and payable in respect thereof, To hold the same unto the said W. D. his executors administrators and assigns as and for his and their own proper moneys estate and effects, Upon the trusts nevertheless, and to and for the intents and purposes thereafter expressed and declared of and concerning the same (that is to say): Upon trust by and out of the said debt or sum of 3000*l.* when the same should be received, to pay the costs of preparing the said indenture and of executing the trusts thereof, and after payment and satisfaction thereof, Upon trusts thereout in the next place to retain pay and satisfy unto the said W. D. his executors administrators and assigns the said sum of 2500*l.* and all interest to become due in respect thereof, and as to the residue (if any) of the said debt or sum of 3000*l.* which should not be paid or applied in the manner and for the purposes thereinbefore mentioned, In trust for the said W. D. his executors administrators or assigns: And it is by the said indenture of assignment further witnessed that for the considerations therein aforesaid, the said W. T. did grant bargain sell assign transfer and set over unto the said W. D. his executors administrators and assigns, All that the part or share of your petitioners J. P. and L. his wife or of your petitioner J. P. in her right of and in the said sums of 30,300*l.*, and 3150*l.*, and all other the money arisen and produced and to arise and be produced from the real and personal estate of the said N. C. deceased, under or by virtue of the said will of the said N. C. deceased, or otherwise howsoever, and all interest moneys then due and thenceforth to grow due and payable for the said part share moneys and premises, and all benefit and advantage thereof, To hold the same unto the said W. D. his executors administrators and assigns upon the trusts and to and for the intents and purposes and under and subject to the powers provisoes declarations and agreements expressed and

And assignment to W. D. of the share and moneys comprised in the above stated security executed to W. T.



declared of and concerning the same in and by the said thereinbefore recited indenture.

That by a certain indenture of assignment indorsed on the said last stated indenture, and bearing date the — day of — 1821, and made between the said W. D. of the first part, the said W. T. of the second part, and your petitioner R. O. of the third part, reciting (amongst other things), that the said debt or sum of 2500*l*. so as aforesaid due and owing from the said W. T. to the said W. D. had been fully paid off and discharged in the manner therein expressed; and further reciting that the said W. T. was at that time indebted to your petitioner R. O. in a considerable sum of money, \*and by way of additional security for the same was desirous that the said debt of £3000 so due to him from the said J. P. and all securities for the same should be assigned unto your said petitioner R. O., and had requested the said W. D. to join with him for that purpose, It is witnessed that for the nominal considerations therein mentioned, the said W. D. at the request and by the direction of the said W. T. did bargain sell assign transfer and set over, and the said W. T. did grant bargain sell assign transfer and set over ratify and confirm unto your petitioner R. O. his executors administrators and assigns, All that the said debt or sum of £3000 so due and owing from your petitioner J. P. to the said W. T. as aforesaid, and all interest then due or thereafter to become due thereon, and all benefit and advantage thereof, and all sum and sums of money to become due and payable in respect thereof, To hold the same unto your petitioner R. O. his executors administrators and assigns from thenceforth as and for his and their own proper moneys estate and effects, in reduction so far as the same would extend of the much larger debt due and owing from the said W. T. to your petitioner R. O.: And it is by the said indenture of assignment further witnessed, that for the considerations therein aforesaid, the said W. D. did bargain sell assign transfer and set over, and the said W. T. did bargain sell assign transfer and set over ratify and confirm unto your petitioner R. O. his executors administrators and assigns, All that the aforesaid part or share of your petitioner J. P. and L. his wife or of your petitioner J. P. in her right of and in the said sums of £30,800 and £3150 and all other the money arisen and produced and to arise and be produced from the real and personal estate of the said N. C. deceased under or by virtue of his said will or otherwise howsoever, and all interest moneys then due or thereafter to become due thereon and all benefit and advantage thereof, To hold the same unto your petitioner R. O. his executors administrators and assigns upon the trusts and to and for the intents and purposes expressed and declared of and concerning the same in and by the said indenture of the — day of — 1818.

That by an order made in the said two causes by his honor the Master of the Rolls bearing date the — day of — 1822, It was ordered that one-seventh part of the money to arise by sale of the sum of £458 Bank Annuities, and of the sum of £117 cash, together with the sum of £700 part of the sum of the £7370 Bank Annuities in the said order respectively mentioned, should be carried over In trust in the first-mentioned cause to an account to be entitled "The

Indenture of assignment by indorsement,

Reciting that the debt of 2500*l*. had been satisfied; And that W. T. was indebted to the petitioner R. O.;

[ \*518 ]

W. D. and W. T. assign the debt of £3000 and all interest due thereon to R. O. absolutely;

And assignment by W. D. and W. T. of the share and moneys comprised in the first stated deed, upon the trusts thereby declared.

Order made, directing one-seventh of certain sums of money and stock to be carried over to the separate account of the

petitioner L. P. in the first mentioned cause.

The same duty carried over.

A further sum of stock standing in the Accountant-General's name in the first cause to a share of which L. P. is entitled.

[ \*519 ]

A commission of bankrupt issued against W. T., and the usual assignment executed to his assignees.

A petition presented by the petitioner R. O. praying that the above-stated security executed to him might be sold for his benefit. Order made, referring it to a barrister to determine whether R. O. was a mortgagee, and if any and what part of the bankrupt's estate; and if a mortgagee, then to fix the value of his securities; and that he should become the purchaser at such price, with liberty to prove for the difference in value between his securities

defendant L. P.'s account," and the Accountant-General of this court was to declare the trust thereof accordingly, subject to the further order of this court.

That in pursuance of the said order the said sum of £700, 3 per cent. Bank Annuities and the sum of £90 cash were carried over by the said Accountant-General to an account entitled "The defendant L. P.'s account," and the same are now standing to the credit of the said account.

That there is now standing in the name of the Accountant-General of this honorable court In trust in the said first-mentioned cause, the sum of £2288, 3 per cent. consolidated Bank Annuities, \*to a proportionable part of which your petitioner the said defendant L. P. is now entitled.

That a commission of bankrupt under the great seal of Great Britain, bearing date on or about the — day of — 1822 was awarded and issued against the said W. T. under which he was duly found and declared a bankrupt, and E. W. M. and J. G. having been chosen assignees of the estate and effects of the said W. T. the usual assignment thereof was made and executed to them by the major part of the commissioners in the said commission named.

That the said indenture of assignment of the — day of — 1821 being considered by your petitioner R. O. as or in the nature of a mortgage security only for the repayment of the debt then due to him from the said W. T., your petitioner R. O. did on the — day of — 1823 present his petition to the Lord High Chancellor of Great Britain, thereby praying that such mortgage security might, with other securities therein mentioned, be sold for the benefit of your petitioner R. O.

That by a certain order bearing date the — day of — 1823 made and pronounced by his honor the Vice-Chancellor on the hearing of the said petition, his honor the Vice-Chancellor was pleased to order that it should be referred to G. R. esq. barrister at law, to ascertain and determine whether your petitioner R. O. was a mortgagee thereof and of any and what other part of the estate and effects of the said bankrupt in the said petition mentioned, and if the said G. R. should find that your petitioner R. O. was a mortgagee thereof, then that he should set and fix the value of the different mortgage securities which your petitioner R. O. might hold, and that your petitioner R. O. should become the purchaser thereof at the price so to be fixed as aforesaid: And it was further ordered that your petitioner R. O. should be at liberty to prove for the difference between the value of the securities including the sum at which your petitioner R. O. had purchased a certain mortgage security from H. C. B. in the said order mentioned, and the sum of 15,114*l.* which had been found to be due to your petitioner R. O. by the commissioners under the commission against the said bankrupt: And it was (amongst other things) further ordered that the said assignees and all proper parties should join in conveying and assuring the said premises unto your petitioner R. O. or as he should direct.

That the said G. R. by his award in writing under his hand bearing date the — day of — now last past, did award and declare

that your petitioner R. O. was a mortgagee of or had an interest in the nature of a mortgage interest in the said security from your petitioners J. P. and L. his wife in the said award called "P.'s security;" and the said G. R. did thereby set and fix the value thereof in order that your petitioner R. O. should or might become the purchaser thereof at the sum of 400*l*.; and the said G. R. did further declare that your petitioner R. O. should become and be taken to be the purchaser thereof at such price as aforesaid, and did thereby further order and direct that the said assignees should procure to be done all and every acts or act necessary for giving effect to the said purchase; and the said G. R. did by his said award \*find that the value of the several securities in his said award mentioned, and which your petitioner R. O. was to be considered as having purchased, amounted including the said sum of 400*l*. and also a sum of 262*l*. the amount at which your petitioner R. O. had become the purchaser of the said H. C. B.'s mortgage, to the sum of 1410*l*., which said sum of 1410*l*. being deducted from the said sum of 15,114*l*. made the sum of 13,703*l*. for or in respect of which your petitioner R. O. was to tender his proof to the said commissioners, being the sum which the said G. R. in and by his said award considered that your petitioner R. O. was entitled to prove.

That your petitioners J. P. and L. his wife are now residing at the Cape of Good Hope, and they are willing that the said several sums of 700*l*. 3 per cent. consolidated Bank Annuities and 90*l*. cash so as aforesaid carried over to the separate account of your petitioner L. P., and all other moneys which now are or may be hereafter payable to her in these causes should be received by and paid to your petitioner R. O. under and by virtue of the indentures of assignment hereinbefore stated; But your petitioners are advised that inasmuch as your petitioner L. P. cannot appear in court personally to consent to the transfer and payment of the several sums of money to your petitioner R. O., it is necessary that a commission do issue out of this honorable court, directed to proper commissioners at the said Cape of Good Hope, to take the consent of your petitioner L. P. to such transfer and payment to your petitioner R. O.

Your petitioners therefore most humbly pray your honor that the said several sums of 700*l*. 3 per cent. consolidated Bank Annuities and 90*l*. cash may be transferred and paid over to your petitioner R. O. by the Accountant-General of this honorable court; and that all further sums of money which now are or may hereafter become due and payable to your petitioner L. P. under and by virtue of the will of the said testator N. C. deceased, may be transferred and paid over to your petitioner R. O. under and by virtue of the several assignments aforesaid; and that a commission may issue out of this honorable court directed to certain commissioners at the Cape of Good Hope aforesaid, to take the consent of your petitioner L. P. to the transfer and payment of the said several sums of 700*l*. 3 per cent. consolidated Bank

and the amount found to be due to him by the commissioners; the assignees to join in such deeds as the arbitrator should direct. Award made, declaring R. O. to be mortgagee, and fixing the value of the above-stated security assigned to him.

[ \*520 ]

And declaring that he should become the purchaser thereof at such price, and that the assignees should join in all necessary acts; Also ascertaining the amount of debt in respect of which the petitioner R. O. was to be entitled to prove under the commission.

That the petitioners J. P. and L. his wife are willing that the aforesaid sums carried over to her separate account, and all other sums payable to her, should be paid to the petitioner R. O., but being resident abroad, it is necessary that a commission should issue to take the

consent of the  
wife to such  
transfer and  
payment.  
Prayer.

[ \*521 ]

Annuities and 90*l.* cash to your petitioner R. O., and for the transfer and payment to your petitioner R. O. of all other sums of money which may hereafter become due and payable to your petitioner L. P. or to your petitioner J. P. in her right, under and by virtue of the will of the said testator N. C. deceased, in these causes; and that your petitioners may have \*such further relief in the premises as to your honor shall seem meet.

And your petitioners shall ever pray, &c.

*Note.*—This petition should be supported by an affidavit of the facts relative to the assignments, &c.

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VII. *Petition by creditors for leave to come in and prove their debts before the Master after the time limited by the court had expired, and the Master's report confirmed.*(2)

*An opinion as to the necessary affidavits is added.*

Between A. T. widow . . Plaintiff,  
and  
W. H. &c. . . Defendants.

To the Right Honorable the Master of the Rolls.

The humble Petition of J. K., C. D., E. F. and G. H.,

Showeth,

That upon the hearing of this cause before your honor on or about — it was amongst other things ordered and decreed that it should be referred, &c. [*The usual decree for creditors to come in and prove their debts.*]

That the said Master made his report bearing date —, which stands absolutely confirmed, and thereby amongst other things certified that, &c. [*certifying the amount of the debts which had been proved.*]

That all the debts so reported due by the said Master together with some other debts which have since been claimed have been fully paid and satisfied, and there now remains in the hands of the Accountant-General of this honorable court the sum of £— being the residue of the said sum of £— directed by the said decree to be applied in payment of the said testator's debts.

That at the death of the said testator there was due from him to J. J. of, &c. the sum of £— for board and lodging, and on his acceptances of two bills of exchange, and such debts now remain wholly due and unsatisfied.

(2) See *Angell v. Haddon*, 1 Madd. Rep. 529.

That the said J. J. hath since departed this life having first duly made and published her last will and testament in writing bearing date —, and thereby appointed one J. C. since deceased and your petitioner J. K. the executor and executrix thereof, and your petitioner J. K. having duly proved the said will of the said J. J. in the proper Ecclesiastical Court is now the legal personal representative of the said J. J.

\*That at the death of the said testator there was due from him to your petitioner C. D. of, &c. the sum of £—, which now remains wholly due and unsatisfied. [ \*522 ]

That at the death of the said testator there was due, &c. [*stating the debts due to other petitioners E. F. and G. H.*]

That your petitioners having been severally unapprized of the said advertisements published by the Master for the creditors of the said testator to come in before him and prove their debts, had no opportunity to claim the same before the said Master made his report.

Your petitioners therefore humbly pray that they may severally be at liberty to come in before the said Master and prove their said debts, and that they may be paid the same out of the said sum of £— now in the hands of the Accountant-General of this court in trust in this cause, your petitioners hereby offering to contribute to the plaintiff their proportions of the expenses of this suit.—[*Or thus*: Your petitioners hereby offering to pay the costs of this application and of the proceedings incidental thereto to be taxed by the said Master.]

And your petitioners shall ever pray, &c.

*Opinion.*—It will be necessary for the petitioner J. K. to prove before the Master the fact of the lodging and boarding of the testator at the house of Mrs. J. by the affidavit of some person who can speak to it, and evidence must also be given as to the non-payment of the two bills of exchange.

To support the petition the petitioners must join in an affidavit to the effect of it.

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VIII. *Petition by a married woman for a writ of ne exeat regno to prevent her husband from going abroad until he has settled alimony on her,*(3) *and paid the costs incurred by the petitioner on an appeal from the Consistory Court to the High Court of Delegates, a monition having been granted and served to compel payment thereof.*

That on or about — your petitioner intermarried with the said defendant C. S., and that having been treated with great unkindness and cruelty by the said C. S., she was compelled in the year — to

(3) The court will not grant the writ of *ne exeat regno* for interim alimony before a decree in the Ecclesiastical Court, nor even after a decree, pending an appeal from that decree; *Street v. Street*, 1 Turn. & Russ. 322, 3.

institute a suit of divorce against him for cruelty and adultery in the court of the Dean and Chapter of Y.

That the said C. S. appeared to such suit and entered a protest thereto, which protest was afterwards overruled, and the proctor of the said C. S. was assigned to appear absolutely in the month of —.

[ \*523 ]

\*That the said C. S. appealed from such sentence to the consistory Court of Y., and in the month of — the judge of that court dismissed the said S. C. therefrom, and your petitioner thereupon appealed from such last-mentioned sentence to the High Court of Delegates.

That the said appeal of your petitioner came on to be heard before the High Court of Delegates in the month of —, when the said court was pleased to assign the proctor for the said C. S. to appear absolutely, and condemn the said C. S. in costs.

That the costs to be paid by the said C. S. in pursuance of the said sentence of the said Court of Delegates have been regularly taxed and settled at the sum of £—, and that a monition hath been granted under the seal of the Court of Delegates to compel the said C. S. to pay the said sum to your petitioner or her proctor, with which monition the said C. S. hath been duly served.

That since the said decision of the Court of Delegates your petitioner hath been and now is proceeding in the said suit so instituted by her as aforesaid in the court of the Dean and Chapter of Y. for a divorce against the said C. S. for cruelty and adultery, and to obtain an annual sum of £— to be assigned to her for maintenance, but your petitioner hath not yet obtained any sentence for alimony therein, and the said C. S. in order to defeat your petitioner of alimony in such suit and also to avoid the payment of the costs in which he was condemned in the Court of Delegates as aforesaid, threatens and intends that when and so soon as he shall be excommunicated which will be the next proceeding to enforce his obedience to the said order of the Court of Delegates, he will make over his property to his son and quit the kingdom, and the said C. S. declares that your petitioner shall never have any thing which he can deprive her of.

That your petitioner hath by the said — her next friend filed her bill in this honorable court on or about — against the said C. S., stating the matters aforesaid, and praying, &c. As by the certificate of the six clerk will appear.

Your petitioner therefore humbly prays your lordship that a writ of *ne exeat regno* may be awarded against the said C. S., or that your petitioner may have such further and other relief in the premises as the nature of this case may appear to require and to your lordship shall seem meet.

And your petitioner shall ever pray, &c.

**\*\*IX.** *Part of a petition by the plaintiffs in a cause, praying for a writ of ne exeat regno against the defendant in respect of a debt(4) arisen on mercantile transactions.*

That upon a fair and just account to be made up and stated between your petitioners and the said defendant as part-owners of the said ship or vessel — and her cargo, and for moneys had and received by the defendant for such goods and merchandize and the proceeds thereof, the said defendant L. M. is indebted to your petitioners in the sum of £1000 and upwards, for which your petitioners have not received any security or satisfaction.

That your petitioners are informed that the said defendant L. M. is soon going abroad to parts beyond the seas as a passenger to settle and reside at —, and has lately declared his intention so to do as well to your petitioners as to other persons, and is collecting in his debts and effects for that purpose, as by the affidavit annexed appears.

That your petitioners on the 1st of December instant filed their bill in this honorable court against the said L. M. stating to the purport and effect hereinbefore set forth, and praying that the said defendant might come to a just and fair account with your petitioners touching the matters hereinbefore mentioned, and might pay what shall be justly due to your petitioners for their respective shares of the proceeds of such outward-bound cargo, and that the said defendant might be restrained from departing out of the kingdom by his majesty's writ of *ne exeat regno*; As by the six clerk's certificate appears.

That in case the said defendant goes beyond sea he will not return again, and your petitioners are in great danger of losing the whole of their said debt amounting to the sum of £1000 and upwards.

Your petitioners therefore humbly pray your lordship that his Majesty's writ of *ne exeat regno* may issue against the said defendant L. M. until answer and further order, for the purpose of restraining his departure out of the jurisdiction of this honorable court, and that the same may be marked for the sum of £1000 or such other sum as to your lordship shall seem meet.

And your petitioners shall ever pray, &c.

(4) Under what circumstances the court will grant the writ, see note (6), *antea*, p. 106; and in addition to the authorities there referred to, see *Boehm v. Wood*, 1 Turn. & Russ. 332, 342, 3, 4.

*\*\*X. Petition by a purchaser (the plaintiff in the third-mentioned suit,) praying (in the alternative) for a reference to the Master to tax the costs incurred by the petitioner in various proceedings and applications made to the court, in consequence of the great delay which had taken place in the investigation of the title and procuring the incumbancers and other parties to execute the conveyances; Or for a reference to inquire whether the vendors (who were trustees for sale) had shown a good title or were able to execute a good conveyance of the estates free from incumbrances previously to the petitioner filing his bill or when else; and that the Master may allow the petitioner a proportionate part of the costs incurred by him;—Praying also for a reference to the Master to take an account of the dilapidations on the estates and deterioration in value of the lands by neglect of management previously to the petitioner taking possession, and that the amount to be allowed for costs, &c. may be repaid to the petitioner out of his purchase-money which had been paid into court and invested in 3l. per cent. annuities; and that the title deeds deposited with the Master may be delivered out to the petitioner.*

In Chancery.

Between T. T. and others, . . . Plaintiffs,  
and  
F. M. T. and others, . . . Defendants.

And between the said T. T. and others, Plaintiffs,  
and  
M. A. T., S. T. S., and C. V. defendants,

And between B. R. . . . Plaintiff,  
and  
The said M. A. T., S. T. S., and C. V. Defendants.

To the Right Honorable the Lord High Chancellor  
of Great Britain.

The humble Petition of the above named B. R.,

Showeth,

Statement of  
the agreement  
for purchase  
by the peti-  
tioner.

That on or about the — day of — 1821, your petitioner entered into a contract or agreement in writing with the above-named defendants in the third-mentioned cause, whereby the said last-named persons agreed to sell, and your petitioner agreed to purchase the manor or reputed manor or lordship of N. in the county of Y., &c. in the said agreement particularly mentioned and described with the appurtenances, free from all incumbrances except as in the said agreement and hereinafter particularly mentioned, at or for the price or sum of —l., and it was stipulated and agreed that such purchase should be completed by the 5th of October then next ensuing.



\*That the abstracts of title delivered by the said defendants to your petitioner, and all of which were not delivered until the — day of —, did not together contain a full and correct abstract of the title of the said vendors to the said estates and premises, and there were several objections to the said title, and the same was discovered by your petitioner to be in question in a suit in this honorable court, and it appeared by the said abstracts delivered that the incumbrances on the said estate were so numerous and great as to exceed the amount of the said purchase-money agreed to be given by your petitioner for the same by several thousand pounds; and that therefore the said vendors were, as your petitioner was advised, wholly unable to execute a good and sufficient conveyance of the said estates and premises, which your petitioner according to the said contract was entitled to have.

That in consequence of no sufficient abstracts of title ever having been delivered, and of the defects of the said title and the disputes thereof, and of the inability of the said vendors to execute a good and sufficient conveyance of the said manor and other hereditaments to your petitioner, your petitioner in or as of Hilary Term 1822, filed his bill in this honorable court against the said vendors, defendants to the said thirdly-mentioned suit, stating as hereinbefore is stated, and charging that the said agreement ought to be forthwith specifically performed and a good title made out, and a good and sufficient conveyance executed to your petitioner of the said manor and other hereditaments, or that your petitioner ought to have the said agreement delivered up to be cancelled; and therefore praying that the said defendants to the said thirdly-mentioned suit might be restrained by the order and injunction of this honorable court from commencing or prosecuting any action at law against your petitioner in respect of the matters aforesaid or any of them, and that the said defendants might be decreed forthwith specifically to perform the said agreement, and execute or cause to be executed a good and sufficient conveyance free from all incumbrances, save as in the said agreement, and as hereinafter mentioned, to your petitioner of the said manor and other hereditaments, your petitioner being ready and willing and thereby offering, upon the said defendants' making out a good title to the said manor and hereditaments and executing such proper conveyance thereof as aforesaid, to pay the said purchase-money and specifically to perform the said agreement on his part, or that the said written agreement might be declared null and void as against your petitioner, and might be cancelled by and under the direction of the court, and that for that purpose the said defendants might be decreed to deliver up that part of the said agreement in their possession as in the said bill was mentioned.

That the said defendants after considerable delay put in their three several answers to the said bill, (that is to say;) the said defendant C. V. put in his answer on the — day of —, the said M. A. T. on the — day of —, and the said S. T. S. on the — day of —, each of the said defendants having taken out all the orders for time to which they were entitled according to the practice of this honorable court.

That the abstracts did not contain a true statement of the title and several objections appeared thereto; the title discovered to be in litigation; that the incumbrances exceeded the amount of the purchase-money, and that the vendors were unable to execute a good conveyance.

Bill filed by the petitioner against the vendors, defendants in the third suit, charging that the agreement ought to be forthwith performed, or be delivered up to be cancelled, and praying that the vendors might be restrained from proceeding at law and be decreed specifically to perform the agreement and execute a good conveyance to the petitioner, he offering thereupon to pay the purchase-money; or that the agreement might be declared void and be cancelled.

Separate answers put in by the defendants, and the times when; each defendant having taken out all the orders for

time to which he was entitled,

[ \*527 ]

That the vendors admitted the contract, but insisted that a good title had been made, and that they could procure a good conveyance to be executed.

Order made upon the motion of the petitioner, referring it to the Master to inquire whether a good title could be made, and the usual directions given with liberty to the Master to state special circumstances.

The reference proceeded in with all despatch.

The title deeds not having been produced for examination, time was allowed by the Master in order to procure the same, and also undertakings to convey to be signed by parties interested.

Statement of the Master's report certifying his opinion, that a good title could be made to the estates in question according to the agreement, and that special circum-

That the said vendors by their said respective answers admitted \*the said contract or agreement, but insisted that a good title had been made to the said estates and premises and that there were no valid objections thereto, and that they should be enabled to execute or cause or procure to be executed a good and sufficient conveyance of the same to your petitioner.

That by an order made in this cause upon the motion of your petitioner and bearing date the 30th day of July 1822, it was referred to Mr. C. one of the Masters of this court, to inquire and state to the court whether a good title could be made to the estates and premises in question in this cause according to the agreement in the pleadings mentioned, for the better discovery whereof the parties were to produce before the said Master upon oath all deeds papers and writings in their custody or power relating thereto, and were to be examined upon interrogatories as the said Master should direct, who was to be at liberty to state any special circumstances as he should think fit at the request of either of the parties, and after the said Master should have made his report such further order was to be made as should be just.

That the said reference was proceeded in with all possible despatch on behalf of your petitioner in the Michaelmas Term then following.

That the title-deeds of the said estates and premises had not been produced for the examination of your petitioner or his agent or solicitor and the said Master gave the said vendors various extensions of time until the month of July 1823 to procure the said title-deeds, and also agreements signed by all parties interested in the said estate and premises undertaking to convey.

That the said Master made his report upon the matters so referred to him bearing date the 22d day of July 1823, whereby he certified that he had been attended by the counsel and solicitor for your petitioner and by the counsel and solicitor for the defendants the vendors, and in their presence had proceeded on the said reference; and abstracts of the title of the defendants to the said estates and premises having been laid before him, together with objections in writing taken by your petitioner to the title as shown by such abstracts, he had perused and considered the same, and upon consideration thereof and of what had been alleged before him touching the same by the counsel on both sides, he was of opinion that a good title could be made to the estates and premises in question in this cause according to the agreement in the pleadings mentioned; and he found that during the investigation of the title to the said estates and premises before him pursuant to the said order, certain special circumstances were disclosed, which as points of conveyance may be necessary to the consideration of who are necessary parties to a conveyance of the said estates and premises, so as to vest the same in your petitioner or in some other person by his direction or for his use, free from all charges and incumbrances now affecting or known to be affecting the same, he had at the request of the solicitor for your petitioner set forth such special circumstances for the consideration of the court, and the same were as follows, (that is to say): It appears that by the settlement

made upon the marriage of F. M. T. and F. his wife, the estates in \*the parishes of N. being parcel of the said estates and premises, were pursuant to a power vested in the said F. M. T. for that purpose as therein mentioned, charged with the payment of an annuity by way of jointure of 150*l.* to the said E. the wife of the said F. M. T. during his life, and for the better securing the same the said estates and premises in the parish of N. aforesaid, were pursuant to a like power limited to trustees therein named for 1000 years, and which term is still outstanding and is now vested in R. G. L. the brother of the said E. the wife of the said F. M. T. ;—That in the year 1811 a recovery was suffered of the said estates and premises in N. aforesaid, in which the said E. T. joined and was vouched for the therein declared purpose of extinguishing her said jointure, and that afterwards a deed was executed by the said F. M. T. for securing to the said E. T. a similar annual sum of 150*l.* charged upon a part of the said estates and premises in the parish of N. aforesaid, in lieu of the annuity secured by the settlement, and a term of 1000 years was thereby vested in F. T. the son of the said F. M. T. for better securing the said last mentioned annuity, but which deed was not registered and was afterwards cancelled by the said F. M. T. ;—That the said E. T. and her brother the said R. G. L. did execute a certain deed of appointment dated the 29th day of September 1820, under the advice of their own counsel, purporting to be an assignment by the said F. M. T. to trustees of the then expected overplus money upon the then intended sale of the said premises, under the trusts of which deed of assignment a like annuity of 150*l.* was to be secured unto the said E. T., but which trust hath failed by reason of there being no surplus to answer the said annuity; and that it was stated to him on behalf of your petitioner, that the said E. T. hath threatened to insist and did insist upon her right to have recourse to the term of 1000 year created by the settlement, and which still remains outstanding for the purpose of recovering her jointure of 150*l.* a year, in consequence of which an application was made to the said E. T. to waive her right aforesaid; and that it is admitted on all sides that she hath signed an agreement to join in the conveyance to your petitioner and release the said estates and premises from the said jointure; and that the said R. G. L. and F. T. the trustees of the said several terms of 1000 years and 1000 years had severally also signed an agreement to assign those terms; and that it also appeared that the said estates and premises were by indentures of lease and release dated respectively the 19th and 20th days of June 1816, conveyed to the said defendants in the said thirdly-mentioned suit, in trust to sell and apply the produce in discharge of incumbrances and otherwise as therein mentioned, and it appears that at the time of the date and execution of the said indentures, there were various incumbrances upon the said estates, and that subsequent to the time aforesaid various other charges and incumbrances were made thereon and that it was upon the investigation of the title of the said defendants (the vendors) to the said estates and premises submitted on behalf of your petitioner, that the incumbrances so affecting the said estates and premises were in amount considerably more than the purchase-money to be paid by

stances were disclosed ne-

[ \*528 ]

necessary to the consideration of who were necessary parties to a conveyance of the estates in question.

Statement of such special circumstances;

That upon the marriage of F. M. T. and E. his wife, part of the estates was, pursuant

to a power, charged with a jointure rent-charge of 150*l.*, and limited to

trustees for 1000 years for securing the same, which term had become vested in R. G. L. ;

That in 1811 a recovery was suffered in which E. T. was vouched

in order to extinguish her jointure, and that a deed was executed

by which a like rent-charge was secured on

other part of the estates, and a term of 1000 years vested in F. T.

for securing the same, which deed was afterwards cancelled;

That E. T. and R. G. L. executed a deed of appointment relating to an expected

overplus of the moneys to  
 [ \*529 ]  
 be produced by sale of certain premises but which was not realized; That E. T. insisted upon her right to have recourse to the 1000 years term for the purpose of recovering her jointure but had agreed to waive her right and to join in a conveyance to the petitioner; that the trustees of the terms had agreed to assign the same; that when the estates were conveyed to the defendants the vendors in trust to sell, they were subject to various incumbrances, and that others were afterwards created, that the same amounted to more than the purchase-money, and that it would be impossible to arrange the priorities and ascertain the rights of the incumbrancers, some of whom had instituted suits, and that it was stated that all persons known to be incumbrancers at the time of registering the trust deeds

your petitioner, and that from their nature it would be impossible \*to arrange their priorities and to ascertain the specific rights of each incumbrancer, and that some of the incumbrancers had instituted suits in this court against the said F. M. T. and E. his wife and other parties for the ascertaining their rights and interests and for payment of the moneys due to them respectively, and that the said defendants could not therefore make unto your petitioner a good and effectual conveyance, and in consequence of the aforesaid submission an application hath been made to all the incumbrancers for their consent to join in a conveyance to your petitioner; and that it was stated that all persons known to be incumbrancers upon the estates and premises previously to and at the time of registering the said trust-deeds had signed an agreement to join in such conveyance upon certain terms and conditions in such agreement mentioned, with which terms and conditions the said defendants had agreed to comply; and that it also appeared that certain deeds whereby a certain annuity is secured to one S. E. were withheld by his solicitor, and not having then been produced to the solicitors for your petitioner, your petitioner claimed to admit the statements relating thereto in the said abstracts, subject nevertheless to any inaccuracies or objections that might appear upon inspection and examination of such deeds.

That the said agreement referred to in the said Master's report is in the words and figures following: (that is to say) [*stating the same.*]

That your petitioner being advised it was evident from the statement of the special circumstances or points of conveyance upon the said Master's report that if the said defendants had made out a good title to the said estates and premises, yet that they were totally unable to make and execute or cause and procure to be made and executed within any limited and reasonable time, good and sufficient conveyances and assurances of the said estates and premises to your petitioner, he your petitioner on or about the — day of the said month of July 1823, presented his petition to your lordship, praying (amongst other things) that the said contract or agreement, might be declared null and void, and might be ordered forthwith to be delivered up to your petitioner to be cancelled, and if necessary, that the said Master's report might be confirmed, but that if the court should be of opinion that the said contract or agreement ought not to be delivered up to be cancelled without further inquiry, then that it might be referred back to the said Master, and that all proper and necessary directions might be given for him to inquire and certify whether the said defendants would be able by any and what means, and within any and what limited and reasonable time, to make and execute or cause or procure to be made and executed to your petitioner good and sufficient conveyances and assurances of the said estates and premises, so as to vest the same in him for his use without prejudice to any claims your petitioner might be entitled to make for compensation or abatements from his purchase-money on account of dilapidations or otherwise.

That the said petition came on to be heard before his honor the Vice-Chancellor on or about the 28th day of July 1823, when his

honor refused to order the said agreement to be forthwith delivered \*up to be cancelled, but his honor was pleased to refer it to J. T. esq. the Master of the vacation, and with power to proceed *de die in diem* thereon, to inquire whether all necessary parties were ready to join in a conveyance of the estates and premises in the petition mentioned, and if he should find that all necessary parties were ready to join, then to settle a conveyance or conveyances thereof to your petitioner, with liberty for the said Master to state any special circumstances; but his honor was also pleased upon the subsequent application of the said defendants made to him on or about the 9th day of August 1823, (upon an allegation of the said defendants that inasmuch as the several mortgagees and incumbrancers had entered into the said agreement in the said Master's report mentioned, to convey the said estates as Master C. should direct, they might object and could not be compelled to convey as the said Master of the vacation should direct,) to vary the said order so made as aforesaid by referring it back to Master C. to make the said inquiry.

That on or about the 3d day of November 1823, your petitioner presented his petition of appeal from the said order of the Vice-Chancellor to your lordship, stating as hereinbefore is stated, and submitting that as your petitioner had lost all the benefit and advantage he would have had by proceeding in the vacation by reason of the said defendants not being in a situation in consequence of the said agreement they had bound themselves by to give your petitioner an immediate conveyance, which your petitioner was advised they ought to have been, upon a good title being reported, his honor the Vice-Chancellor ought to have ordered the said contract to be forthwith delivered up to be cancelled; and your petitioner therefore prayed that the said order of the Vice-Chancellor of the 28th day of July last might be discharged, and that your lordship would be pleased to order that the said contract or agreement should be forthwith delivered up to your petitioner to be cancelled, and that it might be referred to the Master to take an account of all the money costs charges and expenses incurred and paid by your petitioner in the investigation of the said title or otherwise in consequence of the said contract, and also to tax your petitioner his costs of this suit, and that the said defendants might be ordered to pay to your petitioner what upon taking such account and taxation should appear to have been paid and incurred by him; and if necessary that the said report might be confirmed, or that your lordship would be pleased to make such other order as to your lordship shall seem meet.

That before such last-mentioned petition came on to be heard, the said inquiry directed by the said order of his honor the Vice-Chancellor was proceeded with, and the said Master allowed a state of facts of your petitioner thereon, and called upon the said defendants to produce evidence of the readiness of the parties therein named to execute, for which purpose the said Master again allowed them various extensions of time until the month of June 1824, when the said last-mentioned petition came on to be heard before your lordship; and by an order bearing date the 16th day of the said month of June 1824 your lordship was pleased to order that it should be

had signed an agreement to

[ \*530 ]

join in the conveyance upon certain terms; and that certain annuity deeds having been withheld, the petitioner claimed to admit the statements thereof in the abstract, but without prejudice.

Statement of the agreement referred to in the report.

That it being evident from the statement of special circumstances that if the defendants had made out a good title, yet a good conveyance could not be executed within a reasonable time, the petitioner presented a petition praying that the contract might be declared void, and be delivered up to be cancelled, and if necessary, that the report might be confirmed, but if the agreement ought not to be cancelled without further inquiry, then that it might be referred to the Master to inquire within what limited time a good conveyance could be executed but

without prejudice to the petitioner's

[ \*531 ]

claims for compensation on account of dilapidations; Upon the hearing of which petition the V. C. refused to order the agreement to be cancelled, but made a reference to the Master of the vacation to inquire whether all necessary parties were ready to join in a conveyance, and if so to settle the same, with liberty to the Master to state special circumstances; but upon a subsequent application the same was varied by making the reference to the former Master.

Petition of appeal presented by the petitioner, praying that the above order might be discharged, and the contract for purchase cancelled, and for a reference to the Master to take an account of all expenses incurred by the petitioner in the investigation of the title, and to tax his costs of the suit, and if necessary

referred to the said Master to settle all proper and necessary conveyances releases mortgages and other assurances for properly and \*effectually vesting the said estates in your petitioner; and that upon the execution of all such proper and necessary conveyances releases mortgages and other assurances on or before the 10th day of August then next, the purchase-money for the said premises should be paid as the court should hereafter direct; and in case the same should not be so executed, that your petitioner the purchaser should be discharged.

That the said conveyances releases and assurances were not executed by the said 10th day of August; and that by an order of your lordship bearing date the 21st day of the said month of August, upon the application of the said defendants the vendors, your lordship was pleased to order that the time for completing and executing the same should be enlarged to the 15th day of November then next and now last past, and in default of their execution by that time, then that your petitioner should be discharged without further order.

That the said conveyances and assurances were not executed by all parties thereto by the said 15th day of November last; and by another order of your lordship made in the said cause, and also in the other two causes hereinbefore mentioned, upon the application of the said defendants to the said thirdly-mentioned suit, and bearing date the 13th day of the said month of November last, your lordship was pleased to order, by and with the consent and approbation of all parties beneficially interested in the said purchase (being the several parties to the first-mentioned cause) that the said time for completing the same should be further enlarged to the 10th day of January then next, and from thence the same was further enlarged to the 15th day of March last, when by another order made in the said three causes, and bearing date the same 15th day of March last, the said time was by and with the like consent as aforesaid, still further enlarged to the 20th day of April last, with certain variations in the manner and form in the said conveyances mentioned to have been agreed upon relative to such completion as in the said order particularly mentioned, one of which was, that upon such execution by all proper and necessary parties and other matters and things in the said order mentioned being done and performed your petitioner should pay his purchase-money into the bank to the credit of the said three causes, instead of to the credit of the said thirdly-mentioned cause as in such conveyances was mentioned, without prejudice to your petitioner's claims for dilapidation and costs.

That by another order of this honorable court the said time was finally enlarged to the 9th day of May instant, and the said defendants to the said thirdly-mentioned suit having at length completed the said conveyances and done the matters and things in the said several orders required of them, your petitioner on the 7th day of this instant May paid his said purchase-money into the bank, as by the same orders directed. As by the said several orders hereinbe-

fore mentioned reference being thereunto had will more fully and at large appear.

That the said purchase-money was on or about — laid out and invested by the said Accountant-General in the purchase of — 7. 3l. \*per cent. consolidated Bank Annuities, and the same stock is now standing in his name in the books of the Governor and Company of the Bank of England in trust in the said causes.

That on the — day of — possession of the said estates and premises was delivered to your petitioner.

That it was in and by the said purchase contract provided, that inasmuch as the said manor lands and hereditaments at N. aforesaid were subject to certain family portions not exceeding in the whole £7300 for persons some of whom from legal disability might for a time be incompetent to release the said estates, a full and sufficient sum of money for securing the payment of such portions should be set apart from the said purchase-money and be invested by the said defendants and your petitioner their respective heirs executors administrators or assigns on government security in the joint names of trustees, two of whom to be named by the said defendants and two by your petitioner, until the payment and release of such portions, and a proper deed or instrument in writing should at the expense of the said defendants the vendors be prepared and executed by such trustees declaring the trusts thereof, which deed when so executed as aforesaid should be deposited with your petitioner his heirs appointees or assigns.

That during the period the title to the said estates and premises has been under the investigation and the subsequent length of time consumed in the preparing the said conveyances and inquiring as to the necessary parties thereto and obtaining the executing thereof by such parties since the date of the said purchase agreement, the said estates and premises and the buildings thereon have become greatly dilapidated, and the mortgagees and other incumbrancers in possession thereof have suffered the tenants thereof to carry off the produce, and otherwise cultivate the same in an unhusbandlike manner contrary to the custom of the country, whereby the land is greatly deteriorated, and your petitioner has lately caused the same to be surveyed and the damage has been estimated at £—.

That from the circumstance stated in the said Master's report of the number and amount of the incumbrances on the said estates and premises and of the various proceedings negotiations and other matters incident to the situation of the several parties, the convey-

that the Master's report might be confirmed.

That before

[ \*532 ]

the petition of appeal was heard, the inquiry was proceeded in before the Master, who allowed various extensions of time.

That upon the hearing of the petition it was ordered that the Master should settle the necessary conveyances, and that upon the execution thereof by the 10th of August, the purchase-money was to be paid but if not so executed, the purchaser to be discharged.

That the conveyances were not executed at the time fixed, and that by another order the time was enlarged till November.

That by three subsequent orders made upon the applications of the vendors, and with the consent of the

parties beneficially interested, the time was further enlarged to April. Direction given as to the payment of the purchase-money. That by another order the time was finally enlarged to May, and the conveyances being completed the purchase-money was paid into the Bank; the same invested by the Accountant-General; and possession delivered to the petitioner. That by the purchase contract it was provided that a sum should be set apart and invested in the names of four trustees for securing the payment of certain portions, and that a proper deed should be prepared for that purpose. That during the time the title has been under investigation the estates and buildings have become greatly dilapidated, and the land deteriorated through bad cultivation, and that the damage has been estimated at £—. That owing to the number of incumbrancers and the various proceedings the conveyances have been greatly increased in length and expense, and that the costs ought to be paid out of the purchase-money, or that the vendors ought to contribute thereto.

ances and assurances to your petitioner have been very greatly increased in number length and expense, and your petitioner humbly submits that he is entitled to be paid the same out of his said purchase-money so paid by him into court as aforesaid, or that the said defendants the vendors are themselves bound to contribute thereto such portion of the expenses thereof as have been occasioned by reason of such incumbrances and incident thereto, or as shall exceed the amount that your petitioner would have had to bear had the said defendants the vendors in the first instance procured conveyances of the several interests of such incumbrancers to themselves and then have conveyed to your petitioner by a common conveyance; and your petitioner has also at present been at the expense of certain mortgages and other proceedings relative thereto for securing the portions of the purchase-money for parties stated to be under legal disabilities as provided by the said purchase agreement, but [ \*533 ] \*which it also thereby provided should be paid by the said defendants as hereinbefore stated.

That the title deeds evidences and writings relating to the said estates and premises were by the said order of the 15th day of March last ordered to be deposited with the Master; and that upon payment of the said purchase-money by your petitioner the same should be delivered to him, but which hath not yet been done.

Your petitioner therefore most humbly prays your lordship that it may be referred back to the said Master to tax your petitioner his costs of the said third mentioned suit, and also his costs of second mentioned suit, and the costs of the said several orders and applications and other proceedings made and had in the said three suits jointly, and in the said thirdly-mentioned suit separately, Or if necessary that it may also be referred to the said Master to inquire and certify to this honorable court whether the said defendants had shown a good title to the said estates and premises, or whether they were able to execute or cause or procure to be executed to your petitioner a good and sufficient conveyance of the said manor and other hereditaments free from all incumbrances (save as appears by the said contract or agreement for sale) previously to the filing of your petitioner's bill in the said thirdly-mentioned cause, or at what period they made out such good title, or were able to execute or cause or procure to be executed such conveyance as aforesaid; and that the said Master may also allow to your petitioner such part or proportion of the costs charges and expenses of the several conveyances and assurances and of the various proceedings negotiations and other matters and things incurred and paid by him in consequence of or by reason or means of the number of the incumbrances on the said estates and of the situations of the said several parties and incident thereto, together also with such costs charges



and expenses as your petitioner has incurred in or about or in relation to the said mortgages granted to secure the said portions as provided by the said purchase contract, and of the releases thereof when paid off; and that it may also be referred to the said Master to take an account or valuation of the dilapidations which have taken place on the said estates and premises since the date of the said agreement, and of the deterioration of the land, and of the waste committed thereon since the same period, and previously to your petitioner taking possession thereof; and that what the said Master shall tax for your petitioner's said costs of these suits respectively, and what he shall allow for the part or proportion of the said costs \*charges and expenses hereinbefore mentioned, and [ \*534 ] also what he shall certify to be the amount or valuation of the said dilapidations deteriorations and waste may be paid back to your petitioner out of his said purchase-money so paid into the Bank as aforesaid; and that for this purpose the Accountant-General may be directed to sell as much of the sum of —l. 3 per cent. consolidated Bank Annuities now standing in his name in the books of the Bank of England in trust in these causes, as will raise sufficient to pay the same; and that the said Master may be directed to deliver out the title-deeds evidences and writings deposited with him as aforesaid unto your petitioner; and that your lordship will be pleased to make such further or other order and directions as to your lordship shall seem meet.

And your petitioner shall ever pray, &c.

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\*XI. *Petition to have a cause heard on the equity reserved by the decree made at the hearing, a case having been directed for the opinion of the Judges of the Court of King's Bench.*

Between, &c. [*stating the parties' names.*]

To the Right Honorable the Lord High Chancellor of Great Britain.

The humble petition of the above-named S. N.,

Showeth,

That by the decree made on the hearing of this cause it was ordered that a case should be made for the opinion of the Judges of the court of King's Bench, and that the question should be what estate, &c.; and it was ordered that, &c.; and it was further ordered that the Judges of the said court should be attended with the said

Statement of the decree made on the hearing directing a case to be stated

for the opinion  
of the judges  
of the court of  
K. B. ;

and the certi-  
ficate of the  
Judges.

Prayer.

case; and the consideration of costs and all further directions were reserved until after the Judges of the Court of King's Bench should have made their certificate.

That in pursuance of the said decree a case was settled, and came on to be argued in Hilary Term last before the Judges of the Court of King's Bench, who have certified that, &c.

Your petitioner therefore humbly prays your lordship that this cause may be set down to be heard before your lordship on the equity reserved.

And your petitioner will ever pray, &c.

[ \*535 ] \*\*XII. *Prayer of a petition by a defendant to set down a cause for further directions after a verdict obtained on the trial of an issue directed by a decree.*

Your petitioner therefore most humbly prays that this cause may be set down to be heard on further directions next after the causes already set down before your lordship.

And your petitioner shall ever pray, &c.

\*XIII. *Prayer of a petition to vary minutes as to an issue at law.*

Your petitioner therefore humbly prays your lordship that the minutes of the said decree may be varied, and that the parties shall be directed to proceed to a trial at law at the Sittings after — Term next in the court of King's Bench in London on the issue in the said minutes mentioned, or that your lordship will be pleased to make such other order therein as to your lordship shall seem meet.

And your petitioner shall ever pray, &c.

\*XIV. *Petition to examine an aged witness de bene esse before issue joined.*

Between, &c. [*stating the names of the parties.*]

To the Right Honorable the Master of the Rolls.

The humble petition of the Plaintiff,

Showeth,

That your petitioner hath lately filed his bill in this honorable court against the said defendant, whereto he hath appeared, but the said

defendant living in the country at a great distance from London hath obtained an order for time to put in his answer till the first day of the next Hilary Term.

That one E. C. of, &c. is a very material witness for your petitioner in this cause, and without the benefit of whose evidence your petitioner (as he is advised) cannot safely proceed to a hearing of this cause, and the said E. C. is seventy years of age or upwards, and very \*weak and infirm, so that in all probability he may not live till your petitioner can bring his cause to an issue as by the affidavit annexed appears. [ \*536 ]

Your petitioner therefore most humbly prays your Prayer.  
honor that he may be at liberty forthwith to examine the said E. C. *de bene esse* as a witness for your petitioner in this cause, saving all just exceptions.

And your petitioner shall ever pray, &c.

\*XV. *Petition by the vendors of certain copyhold lands sold to the undertakers of a navigation, praying to have the original and cross causes re-heard before the Vice-Chancellor, on the ground that the trustees being four of the plaintiffs in the original bill to whom the petitioners were by the decree directed to surrender the land sold had died, and that no sufficient directions were given by the decree as to whom in that event the surrender was to be made, and also because no inquiry was directed whether a certain deed of covenants entered into by the undertakers of the navigation was sufficient to insure the performance of certain conditions on their part, and that no directions were given for a proper deed of covenant to be executed by them in case the other should be found not to be effectual. (The cross cause was at the hearing dismissed with costs.)*(5)

In Chancery.

Between W. S. S., &c. on behalf of themselves  
and the rest of the Undertakers for the

(5) The following order was made by the Lord Chancellor on the above petition:

“Saturday the — day of January, in the sixth year, &c.

Between W. S. S. &c. on behalf of themselves  
and the rest of the Undertakers for the  
making and keeping navigable the rivers  
A. and C. in the county of —, . . . . .  
Plaintiffs,

and

J. L. and S. W., . . . . . Defendants.

And between J. L. and S. W., . . . . . Plaintiffs,  
and

W. S. S. &c., . . . . . Defendants.

“Upon the humble petition of the said J. L. and S. W. the defendants in the first-mentioned cause and the plaintiffs in the second-mentioned cause this day preferred unto the Right Honorable the Lord High Chancellor of Great Britain, for the reasons therein contained, and the petitioner's clerk in court having subscribed the said peti-

making and keeping navigable the Rivers  
A. and C. in the county of —, Complainants,

and  
J. L. and S. W. . . . Defendants,

And between J. L. and S. W. . . . Complainants,  
and  
W. S. S., &c. . . . Defendants,

To the Right Honorable the Lord High  
Chancellor of Great Britain.

The humble petition of the said J. L. and S. W. the Defendants in the said first mentioned cause and the Complainants in the second mentioned cause,

Showeth,

[ \*537 ] That in or as of — Term in the year — the complainants in  
Bill exhibited by the plain- the first mentioned cause exhibited their bill of complaint in this  
tiffs in the first cause, for making and keeping navigable the rivers A. and C. in the county  
Stating certain acts of of —, and which bill stated that by a certain act of parliament  
parliament, made and passed in the 10th and 11th years of the reign of his late  
Majesty King William the Third intituled "An act for making and  
keeping navigable the rivers of A. and C. in the county of —"  
certain persons therein named undertakers were thereby empowered  
and authorized in the manner therein mentioned at their own proper  
costs and charges to make navigable portable and passable with  
barges boats lighters and other vessels the said rivers of A. and C.  
from W. up to the towns of L. and W.; and that by a certain other  
act of parliament made and passed in the 14th year of the reign  
of his late Majesty King George the Third intituled, &c. &c. And  
the said bill further stated that under and by virtue of the au-  
thority of the said act of parliament of the 14th year of the reign  
of his late Majesty, and by virtue of several conveyances and  
assurances, all the legal estate and interest in the then present navi-  
gation of the said rivers with the works and appurtenances of na-  
vigation thereunto belonging and the tolls and duties by the said  
two acts granted and confirmed, and divers messuages mills ware-  
houses buildings lands tenements and hereditaments, then stood  
vested in the said complainants W. S. S., J. S. and Sir W. M. M.  
Upon trust for themselves and the rest of the undertakers of the  
said navigation their heirs and assigns; and that the said last-  
mentioned plaintiffs together with the plaintiffs J. B., J. L., D. M.,  
F. I. and P. R. who were duly elected according to the provisions of

That the legal estate in the navigation, and certain lands, &c., was then vested in four of the plaintiffs as trustees,

and that they and also the other plain- tiffs formed the committee

tion thereby consenting to pay such costs (if any) as the court should think fit to award in respect to any proceedings had since the decree, and upon the petitioner's depositing £10 with the register in a week, It is ordered that these causes be set down to be re-heard before his honor the Vice-Chancellor next after the causes already appointed, and hereof notice is to be given forthwith."

the said act, were the committee of the undertakers for the time being for the management and government of the said navigation; and that under and by virtue of the said act of the 10th and 11th of King William the Third, the said rivers were made navigable by the said undertakers for the time being, and in so doing a cut for the navigating of boats barges and other vessels thereon was made in the land adjoining to the said river C. at a place called "the Lakes," in the \*township of S. in the parish of W. therein aforesaid, wherein a lock was set and placed and a weir or dam across the same river was made for the purpose of directing the waters of such rivers through such cut and lock, and in doing this a small island containing by admeasurement two roods and nineteen perches was formed between the said cut and the bed or course of the said river, and a small house was at or about the said time the said cut was made erected and built by the side of the said lock for the accommodation of the lock-keeper appointed to attend there in pursuance of the said act; and that the said lands through which the said cut was made were of the nature of copyhold held of the lord of the manor of W. according to the custom of the said manor, and that the undertakers for the time being at the time of making the said cut gave full satisfaction to the owners and proprietors thereof for the damage and injury which the said lands and hereditaments sustained by reason of the making of the said cut lock and lock-house; and the said bill further stated that in or about the year 1796, T. F. purchased of the former proprietors the lands and hereditaments through which the said cut was made, and the same were duly surrendered into the hands of the lord of the said manor, To hold unto the said T. F. and his heirs according to the custom of the said manor, and in consequence of such purchase and surrender the said T. F. claimed to be entitled to the said small island which was then in the possession or occupation of the said undertakers for the time being and also to a small piece of land occupied by the said lock-keeper as a garden to the said lock-house; and the said undertakers being desirous of purchasing the said small island and small piece of land occupied as a garden and also a piece of land adjoining the said river and lock containing by admeasurement two acres two roods and twenty-six perches or thereabouts, in order to make and erect thereon a wood wharf and warehouses for the purpose of facilitating the navigation of the said river and affording conveniences for the carrying or conveying of commodities or other things therefrom, and for the better improvement and conveniency of the said navigable passage, the said undertakers for the time being entered into a treaty with the said T. F. for the purchase of the said premises, and in consequence of such treaty an agreement was entered into by and between the said undertakers for the time being and the said T. F., in performance whereof the undertakers were let into possession of the said piece of land containing two acres two roods and twenty-six perches or thereabouts; but before anything further was done towards the completion of the said agreement, the said T. F. sold and conveyed to your petitioners the said lands hereditaments and premises through which the said cut was made, and the same were afterwards duly surrendered into the hands of the lord of the

of management of the navigation, that under the powers of the first act of parliament a certain cut was made and a lock and dam erected, and also a house for the lock-keeper,

[ \*538 ] and that in so doing a small island was formed, that the land through which the cut was made was copyhold, and that full satisfaction was made to the proprietors, that in 1796 T. F. became the purchaser of the adjoining lands and that the same were surrendered to him, in consequence whereof he claimed to be entitled to the island and the garden occupied by the lock-keeper, and the undertakers being desirous of purchasing the same and some adjoining land for the purpose of making a wharf, &c., entered into a treaty and agreement with T. F. in performance whereof they were let into possession, but that before the com-

pletion of the purchase T. F. sold the said lands to the petitioners, that they refused to complete the agreement entered into by T. F.

[ \*539 ]

but being desirous of selling, they made other proposals to the undertakers, and that they at a meeting duly convened directed their engineer to examine such proposals, and if he approved thereof to contract with the petitioners.

Statement of the agreement entered into ;

that such agreement was duly signed ; and that the undertakers had at a great expense erected buildings on the land agreed to be purchased and made a wharf, and also erect-

said manor, To hold to your petitioners and their heirs as tenants in common according to the custom of the said manor ; and the said bill further stated that your petitioners refused to complete the said agreement entered into between the said undertakers and the said T. F. according to the terms thereof ; but that your petitioners were willing and desirous to sell and dispose of the said piece of land and hereditaments to the said undertakers upon different terms and for a \*larger price than that mentioned in the said agreement with the said T. F., and for that purpose your petitioners caused proposals to be made to the said undertakers for the time being of the terms upon which they were willing to treat for the sale of the said premises ; and at a meeting of the said undertakers duly held according to the provisions of the said act of the 14th year of the reign of his late Majesty on or about the 2d of October 1800, the said proposals were submitted to the consideration of the said meeting, and it was duly ordered at the said meeting that E. W. the engineer of the undertakers should take the earliest opportunity of examining the said proposals, and if he approved of the same he was authorized to contract with your petitioners respecting the same ; and that the said E. W. in pursuance of such order and direction entered into an agreement with your petitioners respecting the said proposals ; and that the said agreement was reduced into writing and was in the words and figures following, (that is to say :) “ Memorandum of agreement made this 10th day of October 1800, between E. W. of, &c. gent. as agent for and on the behalf of the undertakers of the A. and C. navigation of the one part, and J. L. of, &c. and S. W. of, &c. of the other part : First, for and in consideration of the works and improvements thereafter stipulated to be made and done by the said undertakers as therein mentioned, and also in consideration of the sum of 500*l.* to be paid to your petitioners as therein mentioned, they your petitioners had agreed to sell and surrender the following lands being part of their copyhold estates, situate at Lake lock in the township of S. in the parish of W. in the county of — (viz.) [*describing the island and two pieces of land, and the stipulations between the parties ; the ninth condition being thus :*] ‘ A wall proper for the purpose of wharfage ninety yards long to be built on the north side of the cut at the expense of the undertakers for the use of the petitioners where the latter shall appoint.’—This agreement shall be carried into effect by such instrument or instruments as shall be approved by counsel on both sides, with power of umpirage in case an umpire shall be necessary.” And that the said agreement so reduced into writing was signed by your petitioners and by the said E. W. as the agent and on the part and behalf of the undertakers for the time being. And the said bill further stated that the said undertakers for the time being in pursuance of the said agreement and in performance thereof, had at a very great expense erected various buildings and warehouses on the said piece of land for the convenience of the said navigation ; and that they had made and established a wood wharf or wood yard in the place by the said agreement set out for that purpose ; and had at a very great expense built and erected workshops and other buildings necessary for the carrying on the carpentry

work, for the purpose of making and keeping in repair the lock gates flood gates and other wood work necessary in the locks weirs turn-pikes pens cranes wharfs and warehouses of and belonging to the said navigation ; and for the building making and keeping in repair fitting out and launching the boats barges lighters and other vessels employed in the said navigation and the rigging belonging to the same, all which improvements have been made at a great expense, and had \*manifestly tended to the encouragement of the navigation of the said rivers ; and that the undertakers according to the terms of the said agreement had dug made and completed the said cut therein mentioned, and also had erected the lock therein also mentioned, and that they had fully and specifically performed and carried into execution all the acts matters and things by the said agreement stipulated to be performed and done by the undertakers, according to the true intent and meaning thereof, except so far as related to the building of the said wall, and which the said undertakers had not been able to do because your petitioners had not appointed the place where the same was to be built. And the said bill further stated that in the Spring of the year 1810, the said E. W. the engineer and agent and Mr. S. H. the solicitor of the said undertakers and your petitioners met upon the said premises for the purpose of preparing a minute and particular description thereof to be inserted on the court rolls of the said manor and in the deed of covenant thereafter mentioned, and upon that occasion such minute and particular description of the premises was made and agreed upon ; and that on or about the last-mentioned time, and for the purpose of carrying said agreement into execution, a declaration of the uses of the surrender of the said copyhold premises to be made pursuant to the said agreement and to be inserted on the court rolls of the said manor was prepared and agreed upon by and between your petitioners and the said S. H. as the solicitor of the undertakers, and the said declaration of the uses of the said premises to be so surrendered was reduced into writing and signed by your petitioners ; And the said declaration or instrument set forth that your petitioners in consideration of the sum of £500 paid by the then trustees of the undertakers, and that the same with the covenants conditions and agreements contained in a certain indenture bearing even date therewith were the full considerations agreed on for the purchase of the pieces or parcels of land therein-after mentioned, surrendered into the hands of the lord of the said manor, All the pieces or parcels of land hereditaments and premises particularly described in the said contract or agreement thereinbefore mentioned and set forth, with their rights members and appurtenances, To the use of the said then trustees of the undertakers their heirs and assigns forever, according to the custom of the said manor, but subject nevertheless to all such covenants clauses and restrictions as were contained in the said indenture of covenants, and that the said deed or indenture of covenants referred to by the last mentioned instrument was a certain deed or indenture made on or about the 17th day of September 1810, between your petitioners of the one part, and the then trustees on behalf of themselves and the rest of the undertakers of the other part, whereby (amongst other things)

ed workshops for carrying on the carpentry work required. and for building boats, &c.

[ \*540 ]

and that they had completed the cut and erected the lock and specifically performed their part of the agreement except as to building a wall which they had not been able to do because the petitioners had not appointed the place where the same was to be built.

That in 1810 the engineer and solicitor of the undertakers and the petitioners met in order to prepare a description of the premises to be inserted on the court rolls, and that the same and also a declaration of the uses of the surrender thereof were prepared, and that such declaration was signed by the petitioners, Stating the declaration of the uses of the surrender intended to be made to the trustees of the undertakers, and referring to a deed of covenants

made between the petitioners and the undertakers,

a counterpart whereof was prepared and executed by

[ \*541 ]

the trustees, and the bill prayed that the petitioners might be decreed to deliver up the deed of covenants and perform the agreement to surrender the premises; the plaintiffs the undertakers offering to perform their part of the agreement and to pay the purchase-money, and praying also for an injunction to restrain proceedings in ejectment for recovery of the premises.

That the petitioners put in their answer; and also filed a cross bill against the undertakers, to which they put in their answers.

That at the hearing of the causes, the Vice Chancellor ordered that the cross cause should stand dismissed with costs; and decreed in the original cause, that the petitioners should surrender the

your petitioners covenanted for the title of the said copyhold premises, and the said trustees thereby covenanted in consideration of the said intended surrender, to build up erect make uphold and keep in repair all the said improvements stipulated for by your petitioners thereinbefore mentioned in the said contract or agreement; and that a counterpart of the said last-mentioned indenture was made and was executed by the then trustees of the undertakers; and \*the said bill prayed that your petitioners might be decreed to deliver up to the plaintiffs and the said other undertakers the said indenture of covenant thereinbefore mentioned, and that they might be decreed specifically to perform their said agreement and to surrender the said copyhold lands and hereditaments to the uses mentioned and set forth in the said instrument or declaration of uses thereinbefore mentioned the plaintiff and the other undertakers being ready and willing and offering to perform the said agreement on their part, and to pay to your petitioners the said purchase-money or sum of 500*l.* upon such surrender being made; and that in the meantime your petitioners might be restrained by the injunction of the court from proceeding in their action at law therein mentioned for the recovery of the said premises, and from commencing any other action or actions for the recovery of the same.

That your petitioners appeared to the said bill and put in their answer thereto.

That your petitioners exhibited their cross bill against the complainants in the first-mentioned cause, and the defendants in the second-mentioned cause, and which cross bill stated and prayed as therein mentioned, and the defendants to such cross bill put in their answers thereto.

That the answers in both causes having been replied to, such causes came on to be heard before the Vice-Chancellor of England on the 18th day of July, 1820, when it was ordered that your petitioners' bill in the cross cause should stand dismissed out of that court with costs to be taxed by Sir J. S. bart. one of the Masters of the court, and in the original cause the court did order and decree that your petitioners should surrender the copyhold lands and hereditaments in the pleadings mentioned to the uses mentioned and set forth in the instrument or deed of covenants in the pleadings mentioned, and should deliver up to the complainants in the original suit the deed of covenants and surrender; and the court declared that according to the true construction of the agreement and deed of covenants in the pleadings mentioned, the wall therein mentioned was to be built at some place to be appointed by your petitioners on the north side of the cut made by the complainants in the original suit, between the pasture fence and the wood yard in the pleadings mentioned; and it was ordered that the complainants should build the same when required; and in the original cause the court did not think fit to give costs on either side, and any of the parties were to be at liberty to apply to the court as they should be advised.

That the said purchase-money or sum of 500*l.* hath been paid by the said undertakers to your petitioners, and that the said wharf



wall hath been erected and built at or near the place pointed out by your petitioners.

That W. S. S., J. F., J. S. and Sir W. M. M. four of the complainants in the first-mentioned cause, were the persons to whom according to the said deed of covenant your petitioners were by the said decree to surrender the said copyhold lands and hereditaments.

\*That at the time the said decree was pronounced the said J. S. and Sir W. M. M. were dead, and that soon after the pronouncing of the said decree, namely, in the month of April 1821, both the said W. S. S. and J. F. departed this life.

That by reason of such deaths as aforesaid, your petitioners could not surrender the said copyhold lands and hereditaments as directed by the said decree.

That your petitioners are advised that the said decree is defective or erroneous, inasmuch as it does not with sufficient particularity or perspicuity give directions as to the persons to whom to be appointed by the said company or undertakers your petitioners are to surrender the said copyhold lands and premises, and inasmuch as it does not direct any inquiry whether the said deed of covenants under the circumstances of the case is a proper and effectual deed of covenant upon which in case of breach or violation of the covenants therein contained your petitioners could or might sustain actions or an action at law, or otherwise have proper and effectual relief, and inasmuch as the said decree does not contain any directions for a proper deed of covenant to your petitioners being entered into and executed by the proper parties in case the said deed of covenant in the said decree mentioned is not a proper and effectual deed of covenant.

That your petitioners humbly submit that the said causes ought to be reheard before his honor the Vice-Chancellor of England, in order that the said decree may be reversed or varied or altered in the respect above-mentioned or pointed out.

Your petitioners therefore humbly pray your lordship that the said causes may be re-heard before his honor the Vice-Chancellor of England upon such day as his honor shall please to appoint for that purpose; and that the said decree may be reserved or altered in the particulars hereinbefore mentioned; and that such further or other order may be made in the premises as to your lordship shall seem meet.

And your petitioners shall ever pray, &c.

We conceive these causes are proper to be re-heard touching the matter mentioned in the petition, if your lordship shall think fit.

A. B.

C. D.

directed whether the deed of covenant is effectual upon which actions might be if not effectual, that no directions are given for a proper deed to be executed; that the causes ought to be re-heard, and the decree reversed or varied.

premises set forth in the deed of covenants, and declared that according to the true construction thereof,

[ \*542 ]

the wall was to be built at a place to be appointed by the petitioners on the north side of the cut; but no costs were given on either side.

That the purchase-money has been paid to the petitioners, and the wharf wall erected.

That the trustees, being four of the plaintiffs were the persons to whom the surrender was to be made,

Two of whom at the time the decree was pronounced, were dead,

and the other two having since died, the surrender directed could not be made;

That the decree is defective, because no direction is given to whom, in the event which has happened, the surrender is to be made

and because no inquiry is sustained, and And submit

**\*\*XVI.** *Petition of appeal from a decree by the Master of the Rolls, directing an annuity to be set aside.*(6)

In Chancery.

Between G. H. and J. S. . . . Plaintiffs,  
and  
M. P., widow, T. I., and R. R. and  
J. R. . . . . Defendants.

To the Right Honorable E. Lord Thurlow Baron  
Thurlow, of Ashfield in the county of Suffolk,  
Lord High Chancellor of Great Britain.

The humble Petition and Appeal of the defendant M. P.

Showeth,

Loan by J. P. That on or about the 7th day of August 1779, J. P. your petitioner's late husband deceased, lent to the plaintiff G. H. the sum of £100, and thereupon the plaintiffs entered into a bond to the said J. P. in the penalty of £200 or same other penalty conditioned to be void on payment of £100 to the said J. P. his executors administrators or assigns, with interest for the same.

Agreement by J. P. to purchase of G. H. an annuity of 50*l.* for 200*l.* That some short time afterwards the said J. P. agreed to purchase of the plaintiff G. M. who was subject to and from time to time afflicted with the gout, an annuity of £50 for the life of the said plaintiff G. H. for the sum of £200.

Payment of the 200*l.*, and a bond executed by G. H. and the plaintiff J. S. for securing the annuity during the life of G. H. That the said J. P. on or about the 18th day of August 1779 paid unto the plaintiff G. H. the sum of £200 for the purchase of the said annuity, and thereupon the plaintiffs entered into and executed unto the said J. P. a bond bearing date the said 18th of August 1779, in the penalty of £400, conditioned to be void if the plaintiffs or some of them should pay or cause to be paid to the said J. B. his executors administrators or assigns £50 of lawful, &c. yearly and every year during the natural life of the plaintiff G. H. by equal quarterly payments on, &c. the first payment thereof to be made on, &c.

Warrant of attorney also executed as a further security. That the plaintiffs also executed a deed-poll or warrant of attorney of even date with the said annuity bond, to authorize entering up judgments against them in the court of K. B. in an action of debt for £400, being the penalty of the said annuity bond with costs.

Deed of assignment executed by G. H. of his salary as a Commissioner of Taxes, upon trust for securing the annuity. That the plaintiff G. H. also executed an indenture bearing even date with the said annuity, and made between himself of the one part and the said J. P. of the other part, whereby the said plaintiff G. H. assigned all his salary or pay which he was interested in or entitled to as a commissioner of the tax office unto the said J. P. his executors administrators and assigns during the natural life of the plaintiff G. H., Upon trust to apply the same in discharge of

(6) See note (1), *antea*, p. 90.

such sum or sums of money as should thereafter become due and \*payable for or in respect of the said annuity, and all such costs and expenses as the said J. P. his executors administrators or assigns should pay or expend in procuring payment of the said salary or any arrears thereof, and after payment thereof, then to pay and apply the said residue of the said salary to the plaintiff G. H. his executors administrators or assigns as he or they should appoint.

[ \*544 ]

That on the 13th day of January 1781 the said J. P. departed this life having duly made his will bearing date on or about the 1st day of August 1780, whereby he gave the said annuity to your petitioner for life, and made the defendants J. R. and R. R. his residuary legatees, and appointed them executors of the said will; and the said J. P. also made a codicil to his said will bearing date on or about the 4th day of January 1781 whereby he constituted and appointed the defendant T. I. together with the said defendants J. R. and R. R. to be equal and sole executors and residuary legatees of his said will; and soon after the death of the said J. P. the defendants T. I. and R. R. proved the said will and codicil in the Prerogative Court of Canterbury, and they afterwards received of the plaintiff G. H. the aforesaid bond debt of 100*l.* with all interest due thereon, and delivered up the security for the same to the plaintiff G. H.

Death of J. P. having made his will, bequeathing the annuity to his wife, the petitioner, for her life, and making two other defendants his residuary legatees and executors.

That the plaintiff G. H. from time to time paid the said annuity of 50*l.* to the said J. P. in his life-time up to the 18th day of November 1780, and the same since the said J. P.'s decease hath from time to time been paid to your petitioner up to the 18th day of February 1782.

The other defendant T. I. also appointed executor and residuary legatee by a codicil;

That after the aforesaid several payments of the said annuity, that is to say, some time in or about the month of April 1782, the plaintiffs exhibited their bill of complaint in this honorable court against your petitioner and the said other defendants T. I. R. R., and J. R., thereby suggesting amongst other things, that in August 1779 the plaintiff G. H. being indebted to the plaintiff J. S. in 100*l.* and upwards, and to other persons in several sums to the amount of 200*l.* and upwards, and being much distressed for money to pay his creditors applied to the said J. P. to lend 300*l.* who agreed to lend the same on the security of both the plaintiffs, and that on or about the 17th day of that month the said J. P. advanced to the plaintiff G. H. 100*l.* on the joint bond of the plaintiffs for securing the repayment thereof with interest at 5*l.* per cent. per annum, but refused to advance the remainder of the 300*l.* unless the plaintiffs would secure by their joint bond to him the said J. P. an annuity of 50*l.* for the natural life of the plaintiff G. H. redeemable as thereafter mentioned, and that they the plaintiffs objected to granting such annuity for so small a consideration, but the plaintiff G. H. being much distressed for money to pay his debts, and the plaintiff J. S. being also much distressed for money, and the said J. P. taking unjust advantage thereof would not advance the remaining 200*l.* on any other terms, and the plaintiffs being obliged to comply therewith, entered into the annuity bond of the 8th day of August 1779, hereinbefore stated, and executed a warrant of attorney to confess judgment on the said bond, and that judgment was accordingly entered in the court of K. B. as of Trinity Term 1779 against the

Probate of the will and codicil by the three executors, who received the 100*l.* due on the bond.

That the annuity was continued to be paid until the filing of the bill.

Bill exhibited against the petitioner and the executors of her deceased husband, Stating that G. H. was indebted in 300*l.*, and distressed for money;

His application to J. P. for a loan of 300*l.*;

That 100*l.* was lent on the joint bond of the plaintiffs, but that J. P.

refused to advance the residue except as the consideration for an annuity of 50l.; and that the plaintiffs through distress agreed thereto; and executed a bond and warrant of attorney;

That the 200l. was a very inadequate consideration, that it was the understanding that the annuity should be redeemable, but that J. P. would not suffer it to be inserted in the bond, and that the plaintiffs were desirous of redeeming, and had made a tender to the defendants, which they refused to accept, and praying to be at liberty to redeem on repayment of the money advanced with interest.

That the defendants not being able to answer within the time allowed, an injunction issued to restrain their proceeding at law.

That the petitioner put in her answer in sisting that the 200l. was not paid for

\*plaintiffs for £400 debt and 63s. costs, and also thereby suggesting that the plaintiffs never received more than £200 for granting the said annuity, and that when the said annuity bond was given the plaintiff G. H., being only of the age of thirty years and a very good life the sum of £200 was a bad consideration for the said annuity; and further suggesting that it was agreed and understood between the plaintiffs and the said J. P. that when the plaintiffs should be able to redeem the said annuity and repay the said £200 to the said J. P. they the plaintiffs should be at liberty so to do, and on their so doing he would deliver up the said bond, but the said J. P. did not suffer the same to be inserted in the condition of the said bond; and likewise suggesting that the plaintiffs being desirous of redeeming the said annuity applied to your petitioner and the other defendants to permit them to redeem the same on payment of the principal money and interest for the same at the rate of £5 per cent. per ann., but your petitioner and the other defendants refused so to do, and notwithstanding the plaintiffs had tendered £102 to your petitioner and the other defendants the balance of the principal sum of £200 and legal interest due on the said annuity bond they refused to take the same, or to suffer the plaintiffs to redeem the said annuity on any terms, and therefore prayed that on payment of what remained due, &c. [*see the prayer stated, antea, p. 93.*]

That your petitioner and the other defendants being unable to answer the said bill within the time allowed for that purpose by the rules of this honorable court, an injunction issued to restrain them from proceeding at law until they had answered and further order of the court.

That your petitioner afterwards put in her answer to the said bill and the other defendants also put in their answers thereto; and your petitioner by her answer insisted that the said £200 paid by the said J. P. to the said plaintiff G. H. was not nor ought to be considered as paid for the absolute purchase of the said annuity of £50 for the life of the plaintiff G. H., and that the moneys which had been paid to the said J. P. in his life-time and to your petitioner since his death towards satisfaction of the arrears of the said annuity ought not to be considered or taken as payment made in or towards satisfaction of the said £200 and the interest thereof, and that the plaintiffs or either of them ought not to be let in to redeem the said annuity on payment of what remained due on account of the said annuity with lawful interest; and your petitioner thereby submitted to the court whether under the circumstances of the case the plaintiffs or either of them ought to be let in to redeem the said annuity on any terms.

That the plaintiffs replied to your petitioner's answer and also to the answer of the other defendants, and the cause being at issue divers witnesses were examined therein as well on the part of the plaintiffs as on the part of your petitioner; and their depositions being duly published, the cause was set down to be heard before his honor the Master of the Rolls.

That on the 23d day of November 1784 the said cause came on to be heard at the Rolls before his honor the Master of the Rolls, who \*thereupon was pleased to refer it to Mr. Eames one of the Masters

of this honorable court to inquire and state to the court what was the value of the said annuity of 50*l.* on the 18th day of August 1779, and also what was the market price of such annuity on that day, &c. &c. [*stating the order.*]

That in pursuance of the said order the said Master made his report dated the 11th day of July 1785, and thereby certified that he found by the affidavit of R. C. apothecary sworn, &c. &c. [*stating the report.*]

That on the 30th day of November and the 3d day of December 1785 this cause came on to be heard before his honor the Master of the Rolls for further directions and as to the matter of costs reserved by the aforesaid order, and upon opening and debating of the matter and hearing the said order the Master's said report and the Accountant-General's certificate dated the 29th day of November 1785 read and what was alleged by the counsel on both sides, his honor declared he was of opinion that J. P. deceased, &c. [*stating the decree*] which decree has been duly passed and entered.

That it appeared by evidence in the cause that the sum of 200*l.* was actually paid by the said J. P. to the plaintiff G. H. at the time of the execution of the annuity deeds as a consideration for the purchase of the said annuity, and that at the time that the said J. P. purchased the said annuity the plaintiff G. H. was and for some time before had been at times afflicted with the gout, and that the said J. P. paid an increased or advanced annual premium for an insurance on the life of the plaintiff G. H. on account of his being subject to the gout; but it did not appear by any evidence in the cause that the plaintiff G. H. before or at the time of the treaty for granting the said annuity was indebted to the plaintiff J. S. or to any other person, or that the plaintiff G. H. was in distressed circumstances, or that the plaintiffs or either of them were distressed for money, nor did it appear by any evidence in the cause that the said J. P. had agreed or did at any time agree to lend the plaintiff G. H. 300*l.*, or that at the time when the said J. P. purchased the said annuity the plaintiff G. H. was in distress, or if he was then distressed that the said J. P. did take advantage thereof, neither did it appear by any evidence in the cause that it was agreed or understood between the plaintiffs or either of them and the said J. P. that the plaintiffs should be at liberty to redeem the said annuity upon the terms in the said bill of complaint suggested or upon any other terms.

That your petitioner apprehends that the sale and purchase of the said annuity and the transactions relating thereto were between persons competent to make such sale and purchase upon such terms as they should mutually agree upon as equal, either with or without a reference to the then market price of life annuities, and that the said J. P. was not guilty of nor did use or practice any fraud circumvention or imposition in or about purchasing the said annuity, or in any of the transactions relating thereto.

That your petitioner conceives herself aggrieved by the said decree inasmuch as the purchase of the said annuity is thereby ordered \*and decreed to be set side and directions are thereby given for the

the purchase of the annuity; that the payment made in respect of the annuity, ought not to be considered as made in satisfaction of the 200*l.* and interest, and that the plaintiffs ought not to be let in to redeem,

That after replication, witnesses were examined, and their depositions published, and the cause set down to be heard at the Rolls.

That at the hearing the Master of the Rolls directed a reference to the Master to inquire as to the value of the annuity and the market price.

Statement of the Master's report.

That the cause was heard on further directions when the Master of the Rolls decreed the annuity to be set aside, and that the decree was duly passed and entered.

That it appeared in evidence that the 200*l.* was paid for the purchase of the annuity, that the grantor was afflicted with the gout,

and that an increased rate of insurance was paid on his life, but that it did not appear in evidence that he was indebted or distressed, or that J. P. had agreed to lend 300%, or that the plaintiffs were to be at liberty to redeem. That the sale and purchase of the annuity was between persons competent to contract, and that J. P. did not practise any fraud or circumvention.

relief of the plaintiffs, and also for that the plaintiff's bill was not dismissed with costs; and your petitioner also conceives herself aggrieved by the said decree inasmuch as no directions are thereby given for the Master to take an account of the sums of money paid by your petitioner since the death of the said J. P. for the insurance on the life of the plaintiff G. H. and to compute interest thereon, and yet the Master is thereby directed to take an account of all sums of money paid by the said J. P. for insurance on the plaintiff's life and to compute interest thereon at the rate of 5%. per cent. per annum.

And your petitioner also conceives herself aggrieved by the said decree for that notwithstanding it is thereby ordered that out of the said sum of 137%. paid into the bank by the plaintiffs, your petitioner shall be paid her costs of taking the accounts thereby directed together with what shall be found to remain due from the plaintiffs for principal and interest on the said account, and yet it is thereby ordered that in case the said cash in the bank shall not be sufficient for payment thereof that then such deficiency shall be paid by the plaintiffs to the defendants generally, whereas the same ought, as your petitioner apprehends, to have been ordered to be paid to your petitioner in particular.

Your petitioner therefore appeals to your lordship from the said decree, and humbly prays that the cause may be heard before your lordship, and that the said decree may be wholly reversed and the plaintiffs' bill dismissed with costs, or in case your lordship shall not be pleased wholly to reverse the same, then that the said decree may be altered or varied in such manner as to your lordship shall seem just; and that in the meantime all further proceedings in the said cause may be stayed.

And your petitioner shall ever pray, &c.

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*XVII. Part of a petition of appeal from a decree by the Master of the Rolls dismissing the plaintiffs' bill.*

That the said cause came on to be heard before the right honorable the Master of the Rolls on — when his honor was pleased to order, among other things, that your petitioner's bill as against the said defendants J. B., &c. should stand dismissed out of this court without costs, and the decree has been duly passed and entered.

That your petitioners apprehend they are aggrieved by the said decree for that his honor hath dismissed their bill as aforesaid against the said J. B., &c., whereas your petitioners are advised and submit that the said bill ought not to have been so dismissed, but that according to the case made by your petitioners at the hearing of the said cause, your petitioners ought to have been declared by the said

decree to be entitled to the relief sought by their bill against the said defendants J. B., &c. respectively.

Your petitioners therefore appeal from the said decree to your lordship, and humbly pray of your lordship that so much of the said decree as directs that your petitioners' bill as against the said defendants J. B., &c. be dismissed, may be reversed, and that your petitioners may be declared to be entitled to relief against the said defendants J. B., &c. in the manner sought by their said bill, or that your lordship will make such further or other order touching the premises as shall be right.

And your petitioner shall ever pray, &c.

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\*XVIII. *Petition of appeal from a decree made by the Vice-Chancellor directing the defendants to execute an assignment of the premises in question to the plaintiff and to deliver up the lease thereof to him, and also ordering that the injunction which had been granted in the cause to restrain proceedings in ejectment, should be continued, and that the defendants should pay the plaintiff his costs. A note of the judgment pronounced by his honor the Vice-Chancellor, as also of the decision of the Lord Chancellor on the hearing of the appeal, is inserted.*

Between J. S. C. . . . . Plaintiff,  
and  
T. J. and T. R. . . . . Defendants.

To the Right Honorable John Earl of Eldon,  
Lord High Chancellor of Great Britain.

The humble Petition and Appeal of the defendants T. J. and T. R.,  
Sheweth,

That by certain indentures of lease and release and assignment bearing date respectively the 20th and 21st days of May 1776, the indenture of release and assignment being made or expressed to be made between S. E. of the first part, W. B. of the second part, and J. B. E. L. and J. N. of the third part, reciting that a marriage was then intended to be had and solemnized between the said S. E. and W. B., and that the said S. E. under the will of her then late father T. E. deceased, was seised possessed of and entitled to in estates moneys and shares in a certain company therein mentioned, to her own use and disposal, a very considerable fortune exclusive of the sum of 3000*l.* by her said father's will vested in trustees for the separate use of herself and her issue, with bequest over in default as therein mentioned; and further reciting that upon the treaty for the said marriage it was agreed that the several freehold and leasehold estates of the said S. E. therein mentioned, and

Statement of indentures of lease and release, and settlement upon the marriage of S. E. and W. B.,  
Reciting the intended marriage, and the property to which S. E. was entitled;  
That it was agreed that her freehold and leasehold

estates should be settled in

[ \*549 ] manner therein mentioned; and that W. B. should receive the residue of her fortune upon condition that he should settle property equivalent in value; The operative part;

Assignment by S. E. of leasehold premises in Queen square, held under a corporation, with a provision for perpetual renewal every fourteen years, unto four trustees,

Habendum upon trust,

after the solemnization of the marriage, for W. B. for life; Remainder, for S. E. for life; Remainder, In trust for such person as S. E. should by deed or will appoint; In default of appointment, In trust for the survivor of W. B. and S. E. absolutely.

thereby granted released and assigned, should be settled and assured \*to for and upon the several uses trusts intents and purposes therein particularly expressed; and that the said W. B. should on the solemnization of the said marriage have and receive to his own use the residue of the said fortune which the said S. E. was possessed of and entitled to in her own disposal under her said father's will; and in consideration thereof, that the said W. B. should by indentures of even date therewith, settle and assure estates and moneys more than equivalent in value upon her and the issue (if any) of the said then intended marriage, which accordingly had been or were intended forthwith to be carried into execution; It is by the said indenture of release and assignment witnessed that in pursuance and part performance of the said agreement on the part of the said S. E., and for settling and assuring the leasehold messuages or tenements and ground thereafter mentioned to for and upon the trusts intents and purposes thereafter declared, the said S. E. with the privy and consent of the said W. B. (testified as therein mentioned) did bargain sell assign transfer and set over unto the said J. B., E. B., A. L., and J. N. their executors administrators and assigns, (amongst and together with other premises,) All that mansion house situate in Queen Square, containing the dimensions and bounded as therein particularly, described, with the appurtenances thereunto belonging, held under a lease granted thereof to the said T. E. his executors administrators and assigns by the mayor burgesses and commonalty of the city of B. by indenture bearing date the 18th day of May 1764, for a term of forty years from the 25th day of March then last, at the yearly rent of 22s. with a provision for a perpetual renewal every fourteen years upon certain terms therein mentioned. To hold the same unto the said J. B., E. B., A. L. and J. N. their executors administrators and assigns, for and during the remainder of the said term of years and all other the estate term or terms and interest of the said S. E. therein, Upon the trusts and to and for the intents and purposes therein and hereinafter mentioned, (that is to say); In trust for the said S. E. her executors administrators and assigns until the said then intended marriage should be had and solemnized; and from and after the solemnization thereof, In trust to permit and suffer the said W. B. to hold and enjoy the same during his natural life, and from and after his decease, In trust to permit the said S. E. to hold and enjoy the said premises and receive and take the rents and profits thereof during her natural life; and from and after the decease of the survivor of them the said W. B. and S. E. his then intended wife, then In trust for such person and persons and in such manner as she the said S. E. alone, either in the life-time or after the decease of her said intended husband should by deed or will to be executed and attested as therein mentioned, direct or appoint; and in default of any such direction or appointment, then In trust for the survivor of them the said W. B. and S. E. his or her executors administrators and assigns; And the said W. B. did thereby covenant with the said J. B., E. B., A. L. and J. N. their executors administrators and assigns that he the said W. B. should and would from time to time during his natural life, at his own costs and charges



renew the term in the aforesaid leasehold premises, and keep the \*same constantly renewed at the times stipulated and that all such new leases and renewals should be taken in the names of the said trustees upon the trusts thereinbefore declared.

That in pursuance of the aforesaid agreement on the part of the said W. B., he the said W. B. by indentures of lease and release and assignment bearing even date with the said last-mentioned indentures, released assigned and settled certain freehold and leasehold estates and premises to for and upon certain uses trust intents and purposes for the benefit of the said S. E. his said then intended wife and their issue in manner therein mentioned.

That the said intended marriage between the said W. B. and S. E. was shortly afterwards duly had and solemnized; and the said W. B. thereupon entered into possession of the said settled estates and particularly into the possession of the said leasehold mansion house and premises in Queen Square aforesaid and continued in such possession till the time of his decease which took place in the month of March 1812; and the said W. B. during his life-time procured two renewals of the lease of the said mansion house and premises to be granted to him in his own name and not in the names of the trustees of the said settlement; and the last of such renewed leases was at his decease and still is subsisting.

That the said W. B. not having renewed the lease of the said mansion house and premises in Queen Square aforesaid in the names of the trustees of the first-mentioned indenture of settlement pursuant to his covenant and agreement therein in that behalf contained, and supposing that his representatives and estate would be liable to be called upon on account thereof, and having also acted with regard to the said other settled estates and property in a way that he thought liable to be questioned after his death he determined to satisfy and prevent all such claims by bequeathing to his said wife moneys chattels and effects to a much greater amount than the value of all such claims or demands which she or her representatives could set up against his estate and representatives; and did by his last will and testament in writing bearing date — 1811, and duly executed and attested so as to pass real estates, give unto his wife S. B. the sum of £—— to be payable and paid to her at the expiration of twelve calendar months after his decease with interest for the same in the mean time at 5%. per cent. per annum to and for her own proper use and benefit; and he also gave and bequeathed unto his said wife all his household goods household furniture linen and china of every denomination in and about his house in, &c. or wheresoever the same might be at his death, and also his carriages and horses and the harness appendages and appurtenances thereto belonging, and also all his stock of wines and liquors, and also all his farming stock, &c. in and about his farm at —, at his decease respectively to and for her own proper use and benefit, and without any accounts being made or taken thereof, (except his plate and also his pictures and his large book-case in his dwelling-house in — and his books); and the said testator also gave and bequeathed unto his said wife all her diamonds pearls jewels rings trinkets and all other her

Covenant by W. B. to renew [ \*550 ]

from time to time during his life.

Settlement executed by W. B. of freehold and leasehold premises.

The marriage solemnized, and W. B. entered into possession of the premises in Queen Square, and so continued till his death; that he procured two renewals of the term therein in his own name, and not in the names of the trustees of the settlement, and that the last of such terms is still existing.

Statement of the motives influencing W. B. in making the dispositions contained in his will.

His will, bequeathing a legacy to his wife absolutely, with interest until paid, also household furniture, &c.

also her diamonds and

paraphernalia ;

[ \*551 ]

Devise of all his freehold and leasehold estates to his wife for her life ;

and after various specific devises but not including the premises in Queen Square, the testator devised all his residuary real and leasehold estates to A. H. absolutely, upon condition of his taking the testator's surname ;

Bequest of all his residuary personal estate to trustees upon trust for his wife for her life, and after her decease for A. H. absolutely, he taking the testator's surname ;

Declaration that the provision thereby made for his wife was in bar of all claims and demands against his estate or executors under his marriage settlement, or in any other way whatsoever,

paraphernalia and ornaments of her person to and for her own proper use and benefit; and the said testator also gave and devised unto \*his said wife all his freehold and leasehold estates messuages lands tenements yearly fee-farm or ground rents and hereditaments whatsoever in possession reversion remainder expectancy or otherwise howsoever and wheresoever situate or being, and also all his shares in the Stroudwater navigation, To hold the same respectively unto her his said wife and her assigns during her natural life, or for and during so long of his estates terms rights and interests therein as she should happen to live ; and from and immediately after her decease, and after devising specific parts of his said estates unto certain persons and in manner therein mentioned, without mentioning or including the said mansion house and premises in Queen Square aforesaid, the said testator gave and devised unto A. H. the eldest of the sons of his cousin J. H. all the rest residue and remainder of his said freehold and leasehold estates messuages lands tenements yearly fee-farm or ground rents and hereditaments whatsoever and wheresoever in possession reversion remainder expectancy or otherwise howsoever, To hold the same unto the said A. H. his heirs executors administrators and assigns for ever, the said A. H. and his heirs taking and always using the surname of B. and bearing and using his arms; and the said testator gave and bequeathed all the rest residue and remainder of his moneys securities for money stock in the public government funds debts and other personal estate whatsoever after and subject to the payment of his just debts funeral expenses and legacies unto the said J. H. and your petitioners T. J. and T. R., Upon trust to pay to or otherwise permit and suffer the said S. B. or her assigns to receive and take the interest and dividends thereof during her natural life, and after her decease to stand possessed of all the said residuary estate stocks funds and premises, In trust for and to pay assign and transfer the same unto the said A. H. he taking and using the surname and arms of B. as aforesaid; And the said testator did thereby declare and direct that the several estates moneys goods chattels and other provisions thereby given to or made for his said wife, part thereof for her life and other part thereof as her own absolute property for ever, should be in lieu and full satisfaction of and for all such of his freehold or leasehold estates which she his said wife then was or should or might be entitled to, or all claims right or interest which she his said wife then had or should or might have or make in or to all or any of his freehold or leasehold estates respectively under or by virtue of the settlement by him made upon and previous to their marriage; and also of and for all moneys which she his said wife then was or should could or might claim or be entitled unto under or by virtue of the settlement or articles by him made and executed before and previous to their marriage; and also of and for all other claims and demands whatsoever which she his said wife should could or might have been entitled to claim and demand of or against his estate or executors under or by virtue of the said settlement or articles by him made and executed upon or previous to their said marriage, or upon any other account or by any other ways or means whatsoever; and that she his

said wife did and should so soon as convenient might be after his decease, at the costs and charges of his estate, execute and deliver a proper and effectual \*surrender release or conveyance of all such said estates claims rights or interests unto the several persons to whom he had by his said will given his said estates from and after the decease of his said wife; and also should as soon as conveniently might be after his decease, at the costs and charges of his estate, execute and deliver unto the executors of his said will a proper and effectual release of and from all such moneys claims and demands; and the said testators did thereby appoint the said J. S. H. and your petitioners, executors of his said will; and shortly after the decease of the said testator the said J. S. H. and your petitioners duly proved the same in the Prerogative Court of the Archbishop of Canterbury and took upon themselves the burthen of the execution thereof, and the said J. S. H. hath since departed this life leaving your petitioners his co-executors him surviving.

That the said testator departed this life without issue, leaving his wife the said S. B. him surviving, who thereupon entered into the possession and receipt of the rents and profits of the freehold and leasehold estates comprised in the said settlement, and particularly into the possession and receipt of the rents and profits of the aforesaid leasehold mansion house in Queen Square, and continued in such possession and receipt until the time of her decease.

That the said S. B. accepted the several provisions made for her by the said will of her said late husband, and she thereupon gave and executed to your petitioners and the said J. S. H. as such executors as aforesaid a deed of release pursuant to the directions contained in the said will, and to the purport or effect thereby prescribed.

That the said S. B. departed this life in or about the month of — 1815, having previously duly made and published her last will and testament in writing bearing date — 1813, whereby amongst other devises and bequests therein contained, the said testatrix gave and devised unto the said complainant by the description of her grand-nephew J. S. C., all that her messuage or dwelling-house situate in Queen Square aforesaid, which the said testatrix held upon lease under the Corporation of the said city with the appurtenances, To hold the same unto the said J. S. C. his executors administrators and assigns, for all the said testatrix's estate term right of renewal and interest which she should have therein at her decease; and the said testatrix appointed your petitioner T. J. together with J. B. and J. S. H. the younger joint executors of her said will; and the said will hath been since duly proved in the proper Ecclesiastical Court.

That upon the decease of the said testatrix the said complainant entered into and has since continued in the possession or receipt of the rents and profits of the said leasehold mansion house and premises in Queen Square bequeathed to him by her said will.

That your petitioners have since the decease of the said S. B. discovered that the said testator W. B. had renewed the lease of the said mansion house and premises in his own name; and the said

and that she should execute all necessary conveyances,

[ \*552 ]

and also a deed of release to his executors.

Probate of the will by the petitioners and J. S. H. the executors. Death of J. S. H.

That the testator's widow S. B. entered into possession of the estates devised to her and of the premises in Queen Square;

That she accepted the provisions made for her by the will, and executed the release required;

Her death, having made a will bequeathing the premises in Queen Square to the plaintiff J. S. C.;

Probate thereof by the executors.

That upon her death the plaintiff entered into possession of the premises in Queen Square.

That since the decease of the

widow the petitioners discovered that the testator had renewed the lease in his own name; that his residuary devisee applied to them to allow him to use their names for recovery of possession, and that he had commenced an action of ejectment. That thereupon the plaintiff filed his bill suggesting that the condition in the testator's will referred to the settlement made by him and not to the settlement made by his wife, and praying that the petitioners might be declared to be trustees for the plaintiff under the bequest contained in the will of the testator's widow, and might assign the premises to the plaintiff; praying also for an injunction to restrain the proceed-

\*A. H. B. conceiving himself to be entitled thereto,(7) as the residuary devisee named in the said will of the said W. B. deceased, applied to your petitioners to allow him to use their names for the purpose of enabling him to obtain possession of the same premises; and your petitioners having consented thereto, the said A. H. B. commenced an action of ejectment against the said complainant J. S. C., as well upon the demise of your petitioners as also upon the demise of him the said A. H. B.

That upon the commencement of the said action of ejectment and in or about the month of June 1820, the said complainant exhibited his bill of complaint in this honorable court against your petitioners, thereby suggesting amongst other things, that the aforesaid condition or declaration contained in the will of the said W. B., referred to the aforesaid settlement made by him previously to his said marriage and not to the aforesaid settlement made by the said S. B.; and that the said S. B. was after the death of the said W. B., and that the said complainant was then beneficially entitled to the said message or tenement and premises under the trusts of the said settlement; and praying that your petitioners might be declared to be trustees of the said message or dwelling-house, and of the term of years for which the said W. B. obtained a renewed lease thereof in his own name, and for which he held the same at his death for the said complainant as beneficially entitled thereto under the bequest or appointment contained in the will of the said testatrix S. B.; and that the said defendants might accordingly be decreed to assign the same with the appurtenances to the said complainant or to such person or persons as he should direct or appoint, for the remainder of the said term of years therein then vested in the said defendants your petitioners as the executors of the said W. B.; and also to deliver up to the said complainant the then subsisting lease thereof from the mayor burgesses and commonalty of the said city of B.; and that in the mean time your petitioners might be restrained by injunction from proceeding in the said action of ejectment, or from taking any other proceedings at law to obtain the possession, or to disturb the said complainant in the possession thereof, and for general relief.

That your petitioners put in their answer to the said bill, thereby insisting that the said S. B. had after the death of her said husband accepted the provisions given to and made for her by his said will; and that the said S. B. in compliance with the said proviso and direction contained in the said will of her said husband, executed and

(7) The following opinion was given by an eminent counsel in favor of the title of A. H. B. :

"I am of opinion that the provision made by the will of Mr. B. for his wife, was in satisfaction of all claims and demands of every description which she had or could make against his property either in the shape of debt or on account of any part of her estate possessed by him; and I think the leasehold estate in Queen Square must be considered as intended by him to pass as part of his own property to his residuary legatee, though in equity it would have belonged to his wife, if he had not compensated her for it by his will. I am of opinion however, that it belongs to Mr. B. as the residuary legatee of the testator, as part of his residuary estate, and the legal estate in the Queen Square house being in the testator at his death, is now vested in his executors, and may be recovered by ejectment, which is the proper remedy for that purpose."

gave to the executors of his said will in pursuance thereof a deed of declaration and release; that at the time of her said will the said S. B. did not know that her said husband had renewed the said leasehold messuage in Queen Square in his own name; and that after the decease of the said S. B. the said complainant had agreed to sell the said messuage in Queen Square, when upon making out or looking into the title it was discovered that the said testator W. B. had made the renewals thereof in his own name which was the first information or knowledge your petitioners or the complainant had thereof; and further insisting that as the said testator had by his said will made a very large provision for his said wife and thereby expressly provided that such provision should be in lieu of all claims and demands which his said wife might or could have against his estate or executors by any ways or means whatsoever, the same was intended by him to extend to the said leasehold messuage or tenement and premises in Queen Square aforesaid, the lease whereof had been renewed by him in his own name and which he had treated as belonging to him.

That the plaintiff replied to your petitioners' answer, and the cause being at issue was set down to be heard before your lordship.

That on or about the 5th day of May 1823 the said cause came on to be heard before his honor the Vice-Chancellor,(8) who thereupon was pleased to decree that the defendants should assign the messuage or dwelling-house in the pleadings mentioned with the appurtenances thereunto belonging to the plaintiff his executors administrators or assigns, or to such person or persons as he should direct or appoint for the remainder of the term of years then vested in them as executors of W. B. deceased the testator in the pleadings of this cause mentioned, and deliver up to the plaintiff the subsisting lease of the same; and it was ordered that it should be referred to Mr. Cox one of the Masters of this court to settle the assignment in case the parties should differ about the same, and it was ordered that the injunction granted in this cause should be continued, and it was ordered that the defendants should pay to the plaintiff his costs of this suit to be taxed by the said Master in case the parties should differ about the same, and any of the parties were to be at liberty to apply to this court as there should be occasion, which decree has been duly passed and entered.

That your petitioners conceive themselves aggrieved by the said decree inasmuch by the express terms of the condition contained in the said will of the said testator W. B. it is declared that the provisions thereinbefore by him made for his said wife should be in lieu

ings in ejectment.

[ \*554 ]

That the petitioners by their answer insisted that the widow accepted the provisions made for her by her husband's will, and executed a deed of release.

That at the date of her will she did not know that her husband had taken the renewals in his own name, and that it was first discovered after her death upon the occasion of the plaintiff entering into an agreement for a sale of the premises; and that by the expressions used in the will, the provision thereby made by the testator for his wife was intended to bar her claim to the premises in Queen Square.

That the cause was set down to be heard; and a decree made directing the defendants to assign the premises to the plaintiff for the residue of the term vested in them; referring it to the Master to settle the as-

(8) The following is a note of the judgment pronounced by his honor the Vice-Chancellor, for the favor of which the Editor is indebted to the kindness of Mr. Wirtmarsh, as also for the note of the decision on the hearing of the appeal.

"This case is quite clear,—the testator by his will merely intended that the wife should release all claims and demands under the settlement made by the husband of his freehold and leasehold estates. The husband only took an interest in her estates in case he survived the wife, and she survived him, consequently there was no interest of the husband's for her to release. If she had done any thing with her estates it must have been by conveyance from her, and the release did not operate upon the estates of herself under the settlement. There is no case to put her to an election; it is quite clear upon reading the three deeds. The costs of the suit must be paid out of the husband's estate."

signment in case the parties differed, and also ordering the injunction which had been granted to be continued, and that the defendants should pay the plaintiff his costs, and reserving liberty to any of the parties to apply as there should be occasion.

That the decree has been duly passed.

and full satisfaction not only of and for all such of his freehold or leasehold estates which his said wife then was or should or might be entitled to or all claims right or interest which she then had or might have or make in or to all or any of his freehold or leasehold estates respectively under or by virtue of the settlement by him made upon and previously to their marriage, and for all moneys which she then was or should could or might claim or be entitled unto under or by virtue of the settlement or articles by him made and executed previously to their marriage, but also of and for all other claims and demands whatsoever which his said wife should could or might have or be entitled to claim and demand of or against his estate or executors under or by virtue of the said settlement or articles by him made and executed upon or previously to their said marriage or upon any other account or by any other ways or means whatsoever. And your petitioners therefore humbly insist that it was the said testator's intention that his said wife or her representatives should have released all right claim and interest in or to the said leasehold messuage or tenement and premises in Queen Square, the lease whereof had been so as aforesaid by him renewed in his own name.

Your petitioners therefore appeal to your lordship from the said decree, and humbly pray that the said cause may be heard before your lordship, and that the said decree may be reversed and the said complainant's bill dismissed with costs, or in case your lordship shall not be pleased wholly to reverse the same, then that the said decree may be altered or varied in such manner as to your lordship shall seem just, and that in the meantime all further proceedings in the said cause may be stayed.

And your petitioners shall ever pray, &c.

*Note.*—The decree made by the Vice-Chancellor was affirmed by the present Lord Chancellor Lord Lyndhurst, and the deposit (10*l*.) was ordered to be paid to the plaintiff. 30th October, 1827.

## \*CHAPTER VIII.

## AFFIDAVITS.

\*I. *Affidavit of the plaintiff in the cause as to the loss of certain writings.*(1)

In Chancery.

Between A. B. . . . . Complainant,  
and  
C. D. and others, . . . Defendants.

The said complainant A. B. maketh oath and saith that some time since, to wit, on — last, the several writings now sued for in this cause, were in his this deponent's custody and possession, but since the said time he this deponent hath accidentally lost them. And this deponent further saith that he does not know where the said writings are, unless they are in the hands or custody of the said defendants, some or one of them, or else that the said writings are now or were lately in the custody of the said defendant J. K. as this deponent is credibly informed and verily believes.

Sworn, &c.

A. B.

\*II. *Affidavit of the plaintiff, as to a witness being old and infirm, in order to his examination de bene esse.*

In Chancery.

Between, &c. [*stating the parties' names.*]

A. B. of, &c. gent. the plaintiff in this cause, maketh oath and saith that C. D. of — is a very material witness on his behalf in this cause, and without whose evidence this deponent as he is advised and verily believes, cannot safely proceed to a hearing of this cause, and that the said C. D. is now of the age of seventy years and upwards as he the said C. D. informed this deponent. And this deponent further saith that the said C. D. appears to be very weak and infirm, and \*in a declining state of health, and from his advanced years in all probability not likely to live long. [ \*557 ]

A. B.

Sworn, &c.

(1) Vide ante, p. 169, 172, and note (2), p. 169

*\*III. Affidavit by an attesting witness of the due execution of certain indentures of lease and release.*

In Chancery.

Between, &c. [*stating the parties' names.*]

A. B. of, &c. maketh oath and saith that the above-named defendant E. A. and also T. B. of, &c. esq. did each of them in the presence of this deponent and of R. A. of, &c. duly sign seal and as their several acts and deeds execute and deliver certain indentures of lease and release bearing date respectively the — and — days of —, being a conveyance settled and approved by — the Master to whom this cause stands referred of certain premises situate, &c. mentioned in the decree or decretal order made in this cause on the — day of —. And this deponent further saith that L. O. of, &c. did also in the presence of this deponent and the said R. A. duly sign seal and as his act and deed deliver the said indenture of release; and that the names A. B. and R. A. indorsed upon the said indenture of lease as witnesses attesting the execution thereof by the said E. A. and T. B. and on the said indenture of lease as witnesses attesting the execution thereof by the said E. A., T. B., and L. O. are of the proper hand-writing of this deponent and the said R. A. respectively.

A. B.

Sworn at the public office, &c.

[ \*558 ] *\*\*IV. Affidavit by an attesting witness as to the execution of certain purchase-deeds by a defendant (previously to her marriage;) by an order made upon petition, upon such execution being verified by affidavit(2) she was declared entitled to have a transfer made to her of a sum of stock standing in the Accountant-General's name.—(See the following affidavit.)*

Between J. M. and I. his wife, E. L. and M. his  
wife, . . . . . Plaintiffs,  
and  
J. S., J. W. and L. his wife, &c. &c.  
Defendants.

On the petition of the Rev. H. O.  
clerk, and the above-named de-  
fendant L. L. O. late L. L. S.  
and of the defendants J. W. and  
J. L. W.

P. B. L. of, &c. solicitor for the petitioners in this petition maketh

(2) This course was adopted to save the expense of procuring the Master's certificate.



oath and saith that the several conveyances and assurances of the estates sold, as mentioned in the order made in this cause on the petition of the above-named defendant L. L. O. by her then name and description of L. L. S. bearing date the 8th day of August 1827 to the several purchasers thereof, have now been duly and properly executed by the said L. L. O. ; and that they were so executed by her before her marriage with the petitioner H. O. ; and that such several conveyances and assurances consist of certain indentures of lease and release bearing date respectively, &c. &c. ; and that such several indentures were all duly signed sealed and delivered by the said L. L. O. then L. L. S. spinster, in the presence of this deponent and of J. W. one other of the above-named defendants as witnesses thereto ; and that there remain no other conveyances or assurances acts matters or things whatsoever for the said L. L. O. to execute do or perform for the purpose of completing the sales and conveyance of the said estates in the said order mentioned or any of them. And this deponent further saith that the six several deeds or instruments now produced and shown to him at this the time of his deposing hereto, and marked with the several letters and figures, &c. are such several indentures hereinbefore mentioned and described ; and that the names or signatures L. L. S. set and subscribed to each of the said deeds or instruments as the name of one of the parties executing the same respectively, are all of the proper hand-writing of the said L. L. O. then L. L. S. spinster, and \*were signed by her ; and that the names or signatures P. B. L. and J. W. severally set and subscribed to one of the attestations of the said several deeds or instruments as the names or signatures of the witnesses of the said L. L. O.'s execution thereof, are all of the proper hand-writing of this deponent and of the said J. W. and were signed by them respectively.

[ \*559 ]

P. B. L.

Sworn at the public office, &amp;c.

*\*V. Affidavit by an attesting witness as to the execution of a settlement by one of the defendants, who had previously obtained an order for transfer to herself of a sum of stock standing in the Accountant-General's name upon the execution by her of certain purchase-deeds being verified by affidavit ;(3) before such transfer was made, her marriage was solemnized, and by settlement made previously thereto the amount of stock was assigned to trustees, who then petitioned (the husband and wife also joining) to have the transfer made to them upon the trusts of settlement.*

Between J. M. and I. his wife, E. L. and M. his  
 wife, . . . . . Plaintiffs,  
 and  
 J. S., J. W. and L. his wife, &c.,  
 Defendants.

On the Petition of the Rev. H. O.  
 clerk, and the above-named defend-  
 ant L. L. O. late L. L. S. and of  
 the defendant J. W. and J. L. W.

P. B. L. of, &c. solicitor to the petitioners in this petition maketh oath and saith that on the 5th day of January instant the above-named defendant L. L. O. (late L. L. S. spinster) intermarried with and that she is now the wife of the Rev. H. O. clerk, one of the petitioners in this petition, and that he this deponent was present at and witnessed the solemnization of such marriage, and that previously to and in contemplation of such marriage certain indentures of lease and release and settlement bearing date respectively the 3d and 4th days of February instant were made and executed, the release and settlement being made between the said L. L. O. by her then name and description of L. L. S. of, &c. spinster of the first part, the said H. O. of the second part, the Reverend J. W. one of the above-named defendants and the Rev. J. L. W. of, &c. of the third part, and P. P., and this deponent of the fourth part, whereby after reciting (amongst other things) that the said L. L. O. then L. L. S. was possessed of or entitled (*inter alia*) to the sum of 2545*l.* bank 3 per cent. annuities standing in the name of the Accountant-General of this

[ \*560 ]

\*honorable court, and which would be transferable to her immediately upon the execution of certain conveyances to be certified by affidavit, and that a marriage had been agreed upon and was shortly intended to be had and solemnized between the said H. O. and L. L. S., and that upon the treaty for the said marriage it was stipulated and agreed amongst other things that the said sum of 2545*l.* bank 3 per cent. annuities should be settled and assured upon and for the trusts intents and purposes and with under and subject to the powers provisoes de-

(3) See the preceding affidavit.

clarations and agreements thereafter expressed and declared of and concerning the same, it was amongst other things witnessed that in pursuance of the said stipulations and agreements and for effectuating the same, and for and in consideration of the said marriage, he the said H. O. for himself his heirs executors and administrators and also for the said L. L. S. his said intended wife Did thereby covenant promise and agree, and the said L. L. S. did with the privity consent and approbation of the said H. O. (testified as therein mentioned) for herself her heirs executors and administrators further consent covenant declare and agree to and with the said J. W. and J. L. W. their executors administrators and assigns, that in case the said intended marriage should take effect they the said H. O. and L. L. S. should and would with all convenient speed after the solemnization thereof make do and execute or cause and procure to be made done and executed or join and concur in and procure all proper and necessary parties to join and concur in all such acts deeds matters things transfers and assurances as by the said J. W. and J. L. W. or the survivor of them or by their or his counsel should be required for effectually transferring and making over the said sum of 2545*l.* bank 3 per cent. annuities which were so standing in the name of the said Accountant-General and to which the said L. L. S. was so entitled as aforesaid, so and in such manner as that the same bank annuities may be vested in or in the joint names of the said J. W. and J. L. W. their executors administrators and assigns, upon the trusts and to and for the ends intents and purposes, and with under and subject to the powers provisoes declarations and agreements thereafter particularly declared of and concerning the same. And this deponent further saith that the parchment writing now produced and shown to this deponent at the time of his deposing hereto and marked with the letter (A) is the said indenture of release and settlement, and is the same as is mentioned and referred to in the said petition, and that the same was so executed by the said L. L. O. then L. L. S. spinster on the day that the same bears date, and that no other settlement or assurance charge or incumbrance whatever has been made or executed to the knowledge or belief of this deponent in any manner concerning or affecting the same bank annuities or any part thereof.

P. B. L.

Sworn at the public office, &c.

*\*\*VI. Affidavit by husband and wife (two of the plaintiffs in a cause) that no settlement or agreement for a settlement was ever entered into with regard to her share of an intestate's personal estate.(4)*

Between T. E. G. B., and A. his wife, &c.,  
 Plaintiffs,  
 and  
 M. P., now deceased, . . Defendant.  
 And between the said T. E., G. B. and A. his  
 wife, &c., . . . . . Plaintiffs,  
 and  
 A. P. . . . . Defendant.

G. B. of, &c. and A. B. his wife late A. E. spinster make oath and say that no settlement or agreement for a settlement of any kind whatever was made between these defendants or otherwise before upon or since their intermarriage, and particularly that there is not nor hath there ever been any settlement or agreement for a settlement of or in respect or contemplation of the sum of £105 reported due to the said A. B. for her share of the residue of the personal estate of W. E. the intestate in the pleadings mentioned, and now remaining in the hands of the Accountant-General of this court, or of or in respect or in contemplation of any other sum or sums of money as such share of the said A. B., nor have these deponents nor has either of them done any act matter or thing whereby or by reason or by means whereof the said sum of £105 or any other sum as aforesaid can be deemed construed or taken to be settled upon either of these deponents or the issue of their marriage or any other person or persons whomsoever.

his  
 G. × B.  
 mark  
 her  
 A. × B.  
 mark.

Sworn by the above-named deponents  
 at, &c. the — of —, the contents  
 having been first carefully read over  
 to such deponents, and who appeared  
 perfectly to understand the same, before me,

C. J. S.,  
 A Master Extraordinary in Chancery.

(4) Sums not exceeding £200 and in annual payment £10 are paid by the Accountant-General upon affidavits as to the marriage, and that no settlement has been executed. Bea. Ord. Ch. 464.

For the form of affidavit accompanying the examination of a *feme covert* by commissioners, as to the application of her share of a fund, in court pursuant to an order.

\*VII. *Affirmation of a surveyor, a Quaker, as to the repairs requisite to certain buildings, and the propriety of an agreement for a new lease thereof, being an infant's estate.*

In Chancery.

In the matter of the trustees of the will of J. G. deceased.

W. H. of, &c. surveyor, one of the people called Quakers, maketh affirmation and saith, that he this affirmant was in or about the month of — employed by Sir T. C., &c. &c. to survey a certain messuage or tenement situate, &c. then in the occupation of, &c. and then, which this affirmant was informed, was on lease to them for a term of years which would expire at —, at the clear annual rent of —. And this affirmant saith that he did accordingly survey the said premises which consisted of a messuage or dwelling-house built of brick or timber, &c. and this deponent found that the said buildings thereon were very old and decayed, and the greater part of them not capable of being substantially repaired; and it appeared to this affirmant that if Messrs. O. would agree to lay out the sum of —£. in erecting new and substantial buildings on the site of part of the said premises, and in repairing such parts thereof as were capable of repair, and would surrender the existing lease and take a new lease thereof for the term of — years at the clear yearly rent of —£., that it would be as beneficial to all persons interested in the said premises as could reasonably be expected. And this affirmant saith that in his opinion it would not have been prudent to delay making a new agreement until the expiration of the old lease, or the infant J. S. G. should have come of age, because the property in question and all the property in the neighborhood that can be immediately improved has now increased in value by reason of the new docks made there, but if advantage be not taken thereof that then all the improvements consequent upon the new docks may be in — years time completed upon other premises.

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VIII. *Affidavit that an agreement entered into for a new lease is for the benefit of the infant's estate.*

— Make oath and say that to the best of their information and belief the agreement made and entered into by and between these defendants and Messrs. O. with respect to a new lease of the messuage and premises now in their occupation, and part of the estate of the late J. G. deceased, was a proper and advantageous agreement and beneficial to the infant J. S. G. and all other persons that are or may be interested in the said premises, and that these deponents had no other view or motive for the making of the said agreement than the advantage of the parties interested in the said premises.

## \*CHAPTER IX.

ANSWERS.<sup>a</sup>

## SECT. I.

## THE TITLE.(a)

## In Chancery.

1. Where there is only one defendant to an original bill, in Chancery.

The answer of A. B. defendant to the bill of complaint of C. D. complainant.

(a) If the title of an answer reflects on the plaintiff it is scandal, because the title cannot operate as an admission of the plaintiff's right, or work any conclusion. Therefore where an answer was entitled "The several answer of John Peck, esq. one of the defendants to the bill of complaint of Anna Baines, alias Green, assuming to herself the name of Anna Peck, as pretended wife of John Peck, esq. deceased, and of Anna Maria Green, assuming to herself the name of Anna Maria Peck, as daughter of the said John Peck, esq. deceased," it was held scandalous and impertinent. *Peck v. Peck*, Mos. 45.

<sup>a</sup> An answer must admit or deny every material allegation in the stating part of the bill within the personal knowledge of the defendant, or deny all knowledge with regard to it. If the defendant has information, aside from the bill, he must state his belief. *Devereaux v. Cooper*, 11 Verm. 103; *Bradford v. Geiss*, 4 W. C. C. R. 513; *Brooks v. Byam*, 1 Story, 226; *Woods v. Morrell*, 1 Johns. C. R. 103; *Smith v. Lasher*, 5 Id. 247; *Tradesmans Bank v. Hyatt*, 2 Edw. Ch. 195; *Norton v. Warren*, 3 Id. 106; *Robinson v. Woodgate*, Ib. 422; *Neate v. Hagthorp*, 3 Bland, 551; *Hagthorp v. Hook*, 1 Gill & J. 270; *Bailey v. Wilson*, 1 Dev. & Bat. Ch. 182; *Sloan v. Little*, 3 Paige, C. R. 103; *Champlin v. Champlin*, 2 Edw. Ch. 362; *Robertson v. Bingley*, 1 McCord, Ch. 333; *Bailey v. Wilson*, 1 Dev. & Bat. Ch. 182; *King v. Ray*, 11 Paige, 235; *Walker v. Walker*, 3 Kelly, 302; *Smith v. Loomis*, 1 Halst. Ch. (N. J.) 60; *Jones v. Hawkins*, 6 Ired. Eq. 110. If the defendant has no information on the subject, he must state that he has no information, or is utterly ignorant of the facts; it is not sufficient to answer that he has "no knowledge" of the fact; *Kittredge v. Claromount Bank*, 1 W. & M. 244, and 3 Story, 590; and if the information sought is within his reach, he is bound to obtain it, and state it in his answer. *Swift v. Swift*, 13 Geo. 140. It will not be sufficient to allege that a third person who is interested in the suit, can prove the fact sought to be discovered. *Bell v. Pomeroy*, 4 McLean, 57. A fact alleged in the bill, and admitted in the answer, is established; but every fact alleged in the answer, in avoidance of such fact, must be proved, like a plea, if the answer be traversed. *McDonald v. McDonald*, 16 Verm. 630. And where replications have been filed, allegations in the answer not responsive to anything in the bill, cannot benefit the defendant at the hearing; *Wakeman v. Grover*, 4 Paige, C. R. 23; and if the answer be defective or evasive, it is a ground of exception, but not for an implied conclusion against the defendant. *Blaisdell v. Stevens*, 16 Verm. 179; *Phillips v. Overton*, 4 Hey. 291.

A mere general denial of confederacy and fraud, usual in an answer, is not sufficient where particular acts of fraud are charged in the bill; *Fellows v. Fellows*, 4 Cow. 682; a demurrer to a bill containing such charges, must be overruled; *Burnley v. Jeffersonville*, 3 McLean, 336; see also, *Lewis v. Baird*, Ib. 56; *Gray v. Regan*, 23 Miss. (Cush.) 304. Where a defendant, in his answer, admits facts which render the transaction in question legally or constructively fraudulent, a general denial of fraud is unavailing; *Hawley v. Cramer*, 4 Cow. 717; see also, *Wood v. Mann*, 1 Sumner, 506; the answer must positively and directly deny the allegations in the bill. *Taylor v. Luther*, 2 Sumner, 228; *Pettit v. Candler*, 3 Wend. 618. If an answer is held to be

## In Chancery.

The answer of Sir J. S. C. knt. his Majesty's Attorney-General, one of the defendants to the bill of com- 2. Where his Majesty's At-

insufficient, it is treated as no answer; and if the defendant neglect to make a sufficient answer, as ordered, the bill may be taken *pro confesso*, and a final decree rendered. *Buckingham v. Peddicord*, 2 Bland, 447.

Where a bill charges the defendant with notice of a particular fact, an answer must be given without a special interrogatory; but a defendant is not bound to answer an interrogatory not warranted by the charges in the bill. *Mechanics Bank v. Lynn*, 1 Pet. 376; *Brooks v. Byam*, 1 Story, 226; *Methodist Episcopal Church v. Jaques*, 1 Johns. C. R. 65. What is responsive to a bill in the answer, is to be determined by the bill, not by the interrogatories; *McDonald v. McDonald*, 16 Verm. 630; and where a defendant pleads the Statute of Limitations in answer to a bill in equity, he must answer all the charges in the bill which may avoid the bar, by showing a new promise; but he need not answer the original cause of action. *Chapin v. Coleman*, 11 Pick. 331. The rule for determining whether an answer to any particular averment in a bill is necessary, is to ascertain whether it is material to the plaintiff to enable him to obtain the relief he seeks. *Batterson v. Ferguson*. 1 Barb. 490.

In a suit against a corporation, the corporation and their agent may put in separate answers. *Vermilyea v. Fulton Bank*, 1 Paige, C. R. 37; and an answer by a city corporation, under the seal of the corporation, accompanied by an oath of the presiding officer that he believes the bill to be true, is regular. *Champlin v. Corporation of New York*, 3 Paige, C. R. 210.

Where an answer was filed, purporting to be the joint and several answer of all of numerous defendants, and one of them did not in fact swear to or sign it, but after the cause was set down for hearing, filed a separate answer without leave of the court, this was held to be irregular, and it was ordered to be taken from the files; *Fulton Bank v. Beach*, 2 Paige, C. R. 307; but where the plaintiff replies without objection, he waives the oath and signature of the defendant; *Fulton Bank v. Beach*, 6 Wend. 36; and where the joint answer of a husband and wife, in relation to her separate estate, was signed by both, but sworn to by the husband only, the wife cannot object for the first time on appeal, that the answer was not binding upon her for want of her oath thereto. *Dyott v. North American Coal Company*, 20 Wend. 570. An answer by one of three joint executors, will not be considered as their joint answer, though it appears by an entry of the clerk, that they appeared and filed their answer; and a decree in such case against all, without a decree *nisi*, was reversed; *Chinn v. Beale*, 1 Munf. 63; but the answer of joint defendants need not be joint and several. *Davis v. Davidson*, 4 McLean, 136. An answer purporting to be that of two, but sworn to by one only, cannot be read even as the answer of the defendant who swore to it, without the consent of the counsel for the complainant; *Vaughn v. Johnson's Administrator*, 1 Stockt. (N. J.) 173; but the answer of one party on behalf of the firm, is sufficient, where the members of the firm are not charged with personal knowledge of the facts. *Reynolds v. Dothard*, 11 Ala. 295. Where a suit is brought against husband and wife, and the wife's trustee, the wife cannot answer separately from her husband without leave of the court; *Robbins v. Abrahams*, 1 Halst. Ch. (N. J.) 16; and where there is apprehension on the part of the wife that the husband will not make a proper defence for her, leave will be granted to her to answer separately. *Robbins v. Abrahams*, 1 Halst. Ch. (N. J.) 51.

An answer filed without being sworn to, may be treated as a valid answer by the complainant, and in that case will have the same effect in favor of the defendant as if sworn to. *Fulton Bank v. Beach*, 2 Paige, C. R. 307; *Contee v. Dawson*, 2 Bland, 264; *Billingslea v. Gilbert*, 1 Id. 566; *Moore v. Hunter*, 1 Gilm. 317; *Diamond v. Mayer*, 2 Johns. C. R. 240; *Salmon v. Clagett*, 3 Bland, 125; *Fulton Bank v. Beach*, 6 Wend. 36; *Reed v. Warner*, 5 Paige, C. R. 650; *Denison v. Bassford*, 7 Id. 370. If the affidavit is insufficient, objection must be taken before the final hearing; *Bate v. McLaughlin*, 1 A. K. Marsh. 207; otherwise it is a waiver of the objection. *Geizer v. Burke*, 3 S. & M. 439. Where the affidavit is waived, the answer must notwithstanding be signed by the defendant; *Kimball v. Ward*, Walk. Ch. 439; and if the interests of defendants are separate and distinct, an answer on oath may be waived as to one defendant without such waiver as to the others. *Bulkley v. Van Wyck*, 5 Paige, C. R. 536; *Morse v. Hovey*, 1 Sandf. C. R. 187. Defendants may answer jointly, or jointly and severally, or separately; each defendant however must swear to his answer, or it will be no answer as to him. *Binney's Case*, 2 Bland, 99; *Masterson v. Craig*, 5 Litt. 39. It is competent for one defendant to make the answer of a co-

## In Chancery.

torney-General is a defendant.

plaint of E. C. and R. his wife (late R. A. spinster) complainants.

## 3. Where a de-

## The answer of A. R. an infant under the age of

defendant his own, by referring to and adopting it. *Binney's Case*, 2 Bland, 99; *Warfield v. Banks*, 11 Gill & J. 98; see *Freelands v. Royall*, 2 Hen. & M. 575.

If, in a bill of discovery, the discovery sought from a party would tend to criminate him, or involve a violation of confidence placed in him, as an attorney, or where he sets up a title as *bonâ fide* purchaser, he cannot be called upon to answer; (*Kent, Ch.*) *Phillips v. Prevost*, 4 Johns. C. R. 205; *Legget v. Postley*, 2 Paige, C. R. 599; *Foss v. Haynes*, 31 Maine, 81; but he cannot refuse to make answer if the period fixed by the law within which he could be prosecuted, has elapsed before the answer is filed. *Dwinal v. Smith*, 25 Maine, (12 Shep.) 379; or where the bill charges no felony. *Attwood v. Coe*, 4 Sandf. Ch. 412. He may also object to answer such portions of the bill as would subject him to forfeiture; *Livingston v. Harris*, 3 Paige, C. R. 528; *Brockway v. Copp*, 1b. 539; *Wolf v. Wolf*, 2 Har. & G. 382; *Butler v. Catling*, 1 Root, 310; *Legoux v. Waute*, 3 Har. & J. 184; *North Western Bank v. Nelson*, 1 Gratt. 108; but on a bill for the fraudulently overdrawing by the defendant of his account at a bank, the defendant was compelled to answer an interrogatory as to the intent in the overdrawing. *Mechanics Bank v. Levy*, 3 Paige, C. R. 606; see also, *Meres v. Chrisman*, 7 B. Mon. 422.

A defendant may answer in part, and by his answer state reasons why he should not be compelled to make further answer. *Hunk v. Gookin*, 6 Verm. 462. He is not required to answer matters of recital, unless specially interrogated thereto; and even if he volunteers to answer such matter in part, he is not thereby bound to answer the whole; *Newhall v. Hobbs*, 3 Cush. 274; nor is he required to answer where he denies all interest in property which is the subject of suit; *Tooker v. Slosson*, 4 Edw. Ch. 114; nor is he bound to answer interrogatories not founded on some allegations in the bill. *Miller v. Saunders*, 17 Geo. 92. And where a bill calls for an answer, but contains no interrogatories, it requires no answer. *Wilson v. Stolley*, 4 McLean, 272.

Where a plea or demurrer is overruled by an accompanying answer, if the plaintiff desires a further answer as to any one of the matters covered by the plea or demurrer, he must except to the answer as insufficient; *Kuypers v. Reformed Dutch Church*, 6 Paige, C. R. 57; *Many v. Beekman Iron Company*, 9 Id. 188; *Warfield v. Gambrell*, 1 Gill & J. 503; and when a further answer is called for by exceptions, the defendant may answer anything which he was called upon by the bill to discover, and which he has neglected to answer, although such insufficiency is not covered by the exceptions. *Alderman v. Potter*, 6 Paige, C. R. 658. A repetition of matters contained in a former answer is impertinent. *Gier v. Gregg*, 4 McLean, 202. A defendant may both deny the charges in the bill and set up distinct defences, so that they be not wholly inconsistent with such denial; *Hopper v. Hopper*, 11 Paige, 46; *Chambers v. Warren*, 13 Ill. 318; but an answer overrules a plea to the same matter, a plea being only a showing why the party should not answer. *Joyce v. Gunnels*, 2 Rich. Eq. 259. An answer to the merits of a bill is also a waiver of a former plea to the parties. *Price v. Mitchell*, 10 S. & M. 179. Where however, a plea to the jurisdiction was filed with an answer, it was held that the answer was not a waiver of the plea; *Talbot v. Darnall*, 6 B. Mon. 486; see *Price v. Mitchell*, 10 S. & M. 179; but after the answer, the defendant cannot object to the jurisdiction of the court. *Martin v. Greene*, 10 Miss. 652; *Oldham v. Trimble*, 15 Id. 225; see also, *O'Neil v. Cole*, 4 Md. 107. In an answer in support of a plea, no question can be raised by the answer which has not been raised by the plea. *Andrews v. Brown*, 3 Cush. 130.

Where a defendant has by mistake or misapprehension of the facts, or of his rights, made an omission in his answer inconsistent with the truth, he may file a supplemental answer, under which he may prove that the fact was contrary to the admission; *Hughes v. Bloomer*, 9 Paige, C. R. 269; *Bowen v. Cross*, 4 Johns. C. R. 375; *Murdock's Case*, 2 Bland, 461; see also, *McKim v. Thompson*, 1 Id. 150, where it was held, that a supplemental answer could only be filed on petition supported by an affidavit, setting forth the facts; and the respondent must clearly make out a just and necessary case for filing such supplemental answer. *Carey v. Ector*, 7 Geo. 99; *Coquiland v. Suydam*, 8 Blackf. 24; *Suydam v. Truesdale*, 6 McLean, 459.



## In Chancery.

twenty-one years by — her guardian, one of the defendants to the bill of complaint of J. C. and T. R., J. F. and J. L. complainants. defendant is an infant.

The answer of S. B. widow one of the defendants to the [original(b) and] amended bill of complaint of N. P. complainant.

4. Where one of several defendants puts in her answer to an original and amended bill.

\*The joint and several answer of J. L. and T. R. two of the defendants to the bill of complaint of A. B. and C. D. complainants.

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5. Where two of several defendants put in their answer to an original bill.

The joint and several answer of L. M., R. P. in the bill called E. P., J. R. in the bill called R. R., and R. T. defendants to the bill of complaint of R. M. complainant.

6. Where several defendants join, and the christian names of some of them are mis-stated in the bill.

The further answer of S. J. one of the defendants to the original bill, and her answer to the amended bill of complaint of S. T. and R. D. complainants.

7. Where exceptions have been taken to a former answer and the bill has also been amended.

The joint and several answer of A. B. C. D. and E. F. three of the defendants to the original and amended bill of complaint of N. P. deceased, and also their answer to the bill of revivor and amended bill of A. P. complainant.

8. Where the plaintiff has died before some of the defendants have answered, and the bill has been subsequently amended.

The joint and several answer of J. B. and M. his wife, H. F. E. F. W. F. J. P. and T. P., and of W. P. and J. P. infants under the age of twenty-one years by — their guardian, nine of the defendants to the bill of complaint of T. G. complainant.

9. Where adult and infant defendants join in answering.

The supplemental answer of W. P. T., J. S. and R. U. three of the defendants to the bill of complaint of the Rev. F. W. B. and C. E. complainants.

10. Where a supplemental answer is requisite.

(b) After amendment it is not necessary to notice the original bill in an answer or demurrer, although frequently done; the amended bill is considered as the original bill; *Smith v. Bryon*, 3 Madd. 428; so also 1 Ves. jun. 209 a, 2d edit.

\*SECT. II.;

THE COMMENCEMENT.

1. Introduction or words of course preceding an answer by one defendant.(c)

This defendant now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors uncertainties and other imperfections(d) in the said complainant's said bill of complaint contained,(e) for answer thereunto or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant answering saith, &c. [*The defendant must answer according to his knowledge remembrance information and belief.*]

*Another form of commencement :*

This defendant reserving to himself all right of exception to the said bill of complaint, for answer thereto saith, &c.

2. Introduction or words of course preceding the joint and several answer of several defendants.

These defendants now and at all times hereafter saving and reserving to themselves and each of them all benefit, &c. [*proceed as in form No. 1, supra, as far as the word "as" and proceed thus :*] as these defendants are advised is or are material or necessary for them or any of them to make answer unto, they these defendants severally answering say, &c.

*Or thus :*

These defendants reserving to themselves all right of exception to the said bill of complaint, for answer thereto say, &c.

(c) In the case of an *infant* defendant, this clause is always omitted.

(d) *If the bill has been amended, insert the following form after the word "imperfections;"* "in the said complainant's [original and] amended bill of complaint contained," &c.

(e) *Where exceptions have been taken to the former answer, and the bill has also been amended, insert the following form after the word "contained :"*

"for further answer to the said original bill and for answer to the said amended bill, or unto so much and such parts thereof," &c.

The exceptions should be first answered, and afterwards the amendments as introduced in the bill.

## \*SECT. III.

## COMMON FORMS USED IN FRAMING ANSWERS.

1. *Where a defendant admits a statement.*

And this defendant further answering saith he hath been informed and believes it to be true that, &c. Or, this defendant admits that, &c.

2. *Where a defendant admits a statement of a written instrument.*

And this defendant further saith he hath been informed and believes it to be true that, &c. but this defendant for greater certainty therein craves leave to refer to the said — when the same shall be produced.

3. *Where a defendant believes a statement may be true, but qualifies his admission of it not knowing the same of his own knowledge.*

And this defendant further answering saith he believes it to be true that at the time of his said testator's making his said will and at the time of his death the said testator's sister Jane the wife of — in the said will named had such children as therein in that behalf named, but this defendant does not know the same of his own knowledge, nor can this defendant state as to his belief or otherwise whether she had or not any other children or child at such times or either of them.

*Or thus :*

And this defendant further saith he has never heard or been informed save by the said complainant's said bill whether, &c. but this defendant believes that, &c. as in the said bill is alleged.

4. *Where a defendant sets forth a deed, and alleges the payment by him of a sum of money.*

And this defendant saith that by a certain deed-poll or instrument in writing under the hands and seals of, &c. and bearing date, &c. the said — did in consideration of the sum of —*l.* to them paid by this defendant, the receipt, &c. and which said sum was in fact so paid, remise, release, &c. As by such deed or instrument, to which \*this defendant craves leave to refer when the same shall be produced, will appear.

*5. Where a defendant is entirely ignorant with regard to the statement in the bill.*

And this defendant further answering saith he knows not, and has not been informed save by the said complainant's said bill, and cannot set forth as to his belief or otherwise whether the said complainant has or not applied for or procured letters of administration of the goods chattels rights and credits of the said A. B. to be granted to her by and out of the proper or any or what Ecclesiastical Court, nor whether, &c.

*Or thus :*

And this defendant further answering saith it may be true for any thing this defendant knows to the contrary that, &c. but this defendant is an utter stranger to all and every such matters, and cannot form any belief concerning the same.(f)

*6. Where one of two defendants of his own knowledge knows the statement in the bill to be true, and the other defendant does not know the same but believes the answer of his co-defendant.*

And this defendant M. M. further severally answering saith, and this defendant E. R. believes it to be true, that the said testator was not, &c.

*7. Where two defendants admit the happening of an event but cannot state when it happened.*

And these defendants severally admit, &c. but when in particular these defendants or either of them to the knowledge or belief of the other of them do not know, and cannot set forth as to their information and belief or otherwise.

*8. Where several defendants join, and are all ignorant of the allegations in the bill.*

And these defendants further severally say that they or any or either of them to the knowledge or belief of the others or other of them do not know, and have never been informed save by the said complainant's bill, and cannot set forth as to their belief or otherwise whether, &c.

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*\*9. Where one of two defendants denies the allegation in the bill, and the other defendant believes such denial to be true.*

And this defendant M. M. further severally answering saith she

(f) See *Amhurst v. King*, 2 Sim. & Stu. 183.

denies, and this defendant E. R. believes such denial to be true,<sup>(g)</sup> that the said J. S. M. was then incapable of understanding the said codicil, but saith that he fully knew, &c.

10. *Where two defendants join in denying the allegations in the bill.*

And these defendants further severally say that they these defendants did not nor did either of them to the knowledge or belief of the other of them, nor did the said J. and H. or several or any or either of the members of the said firm to the knowledge or belief of these defendants, a short time or at any time before, &c.

11. *Where a schedule of deeds is required to be set forth.*

And this defendant further saith he hath in the schedule to this his answer annexed or under-written, and which he prays may be taken as part thereof, set forth according to the best and utmost of his knowledge remembrance information and belief, a full true and particular list or schedule of all deeds, &c., and this defendant is ready and willing to produce and leave the same in the hands of his clerk in court for the usual purposes.

12. *Where an account of rents, or moneys received, or paid, is required to be set forth by several defendants.*

And these defendants further severally answering say, they have in the [first] schedule to this their answer annexed or under-written, and which they pray may be taken as part thereof, set forth according to the best and utmost of their several and respective knowledge remembrance information and belief, a full true and particular account of all and every sum and sums of money, &c. [*Or, if an account required as to the real estates, thus: a full true and just rental and particular of all and singular the real estates, &c.*]

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\*SECT. IV.

[ \*569 ]

THE CONCLUSION.

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And this defendant denies all and all manner of unlawful combination and confederacy<sup>(h)</sup> wherewith he is by the said bill charged,

<sup>(g)</sup> See *Walker v. Norton*, Hardr. 165.

<sup>(h)</sup> An answer to a charge of unlawful combination cannot be compelled, and a charge of lawful combination ought to be specific to render it material, as it has been

without this, that there is any other matter cause or thing in the said complainant's said bill of complaint contained (2) material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered confessed traversed and avoided or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver maintain and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

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SECT. V.

FORMS OF ANSWERS.

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A defendant is not bound to confine himself to an answer to the interrogatories in the bill, but may state circumstances in his defence; if the answer goes on to state matter not material to the defendant's case, it will be deemed impertinent, (1) but if it relates to the subject the court will not look critically into its materiality, for though not material according to the statements in the bill, it may become so by evidence; the party must show to make it impertinent, that it never can have any relation to the subject of the suit. (2)

[ \*570 ]

\*If a general question be asked, and a particular one also which is included in the general one, the defendant must answer the particular as well as the general question. (3) Specific charges in the bill must be answered particularly and precisely, therefore a general answer though it may include an answer to a particular inquiry is insufficient. (4) An answer also must not be argumentative, but there must be positive averment. (5) If the discovery sought be not material, the defendant may object to it by answer, and the practice of

determined that a general charge of combination need not be answered, see *Oliver v. Haywood*, 1 Anstr. 82; Ld. Red. Tr. Pl. p. 41, 4th edit.

(2) It is the universal practice to add by way of conclusion a general traverse or denial of all the matters in the bill, Ld. Red. Tr. Pl. p. 314; this is said to have obtained when the practice was for the defendant merely to set forth his case without answering every clause in the bill, see *Anon. Ca.*, 2 P. Wms. 86, where a motion was made to suppress an answer as irregular or improper, the general traverse at the end being omitted, and on the ground that without this traverse there was no issue joined, but the motion was refused.

In the case of an *infant*, the denial of combination and the traverse at the conclusion are omitted, as he is considered incapable of the combination charged in the bill, and his answer cannot be excepted to for insufficiency; Ld. Red. Tr. Pl. p. 314.

(1) Ld. Red. Tr. Pl. p. 313, 4th edit.; 2 Madd. Ch. Pr. 353, 5.

(2) *Ramsden v. Cass*, cited 2 Madd. Ch. Pr. 276.

(3) *Prout v. Underwood*, 2 Cox, 135.

(4) *Wharton v. Wharton*, 1 Sim. & Stu. 235, 6; *Hepburn v. Durand*, 1 Bro. Ch. Ca. 502.

(5) *Faulder v. Stuart*, 11 Ves. 303.

the Masters is to disallow exceptions where the questions are quite immaterial.(6)

In an answer to a bill for an account, it is not sufficient for the defendant to refuse to give information further than to enable the plaintiff to go into the Master's office, the plaintiff has a right to have by the answer connecting itself with books and accounts referred to as part of the answer, the fullest information defendant can give him.(7) If a bill requires an admission of assets, or that the defendant may set out an account, if the defendant admits assets he is not obliged to set out the account.(8) Where in an answer of an executor to a bill containing the usual interrogatories for an account of the personal estate and what it sold for, &c. every particular article and the price at which it sold was set forth in a schedule, it was held impertinent.(9) If pertinence and impertinence be so mixed that they cannot be separated, the whole is impertinent. Needless prolixity is itself impertinence although the matter should be relevant; all that is required in an answer is, that the defendant should fairly and pertinently set forth so much of the instrument or document he may be asked respecting, as is sufficient to satisfy the object and inquiry of the plaintiff's charge and interrogatory, but he must not wantonly incumber the record beyond that.(10) But in *Clissold v. Powell*,(11) Sir John Leach, Vice-Chancellor, held, that if an instrument be required by the bill to be set forth, it is not impertinent to set forth the whole of it, for if a defendant takes on himself to state only the substantial part of the instrument, and an exception is taken because he has not set forth the substantial part, the court would be unable to decide what was the substantial part.

Where a discovery is sought of a correspondence, if the defendants set forth extracts of letters and swear that those are the only parts of the correspondence upon the subject, it is sufficient.(12) \*When a short description of letters is required, it is impertinent to state the short contents of the letters.(13)

[ \*571 ]

If the answer *misnames* the plaintiff it is not considered as an answer, and will be ordered to be taken off the file.(14) So if the answer purports to be an answer to the bill of *five* complainants only, when there are *six*, it will be ordered to be taken off the file.(15)

A defendant will be held to an offer or submission in his answer,

(6) *Agar v. Regent's Canal Company*, Coop. R. 215; and see the cases referred to in note (q), *Ld. Red. Tr. Pl.* p. 316, 4th edit.

(7) *White v. Williams*, 8 Ves. 193, 4.

(8) *Cooper*, R. 215.

(9) *Beaumont v. Beaumont*, 5 Madd. 51. See also *Norway v. Rowe*, 1 Mer. 355; *Parker v. Fairlie*, 1 Sim. & Stu. 295; S. C. on appeal, 1 Turn. & Rus. 362.

(10) *King v. Teale*, 7 Pri. 280; in this case the answer was held impertinent in setting out at too full length a warrant of attorney to confess judgment and the defeazance, although the statement thereof in the bill was very incorrect; and see *Slack v. Evans*, before Lord Chancellor Eldon, cited 7 Pri. 278; Beames's Orders in Ch. p. 70 and 165.

(11) Cited as an *Anon. Ca.*, 2 Madd. Ch. Pr. 355.

(12) *Campbell v. French*, 1 Anstr. 58.

(13) — v. *De Tustet*, cited 2 Madd. Ch. Pr. 276.

(14) *Griffith v. Wood*, 11 Ves. 62.

(15) *Cope v. Parry*, 1 Madd. R. 83. So for other mistakes in the title; *Pieters v. Thompson*, Coop. R. 249; *White v. Godbold*, 1 Madd. R. 269.

though the circumstances of the case were varied from what they were at the time the answer was put in.(16)

If the matter of an answer be material and relevant to the justice of the case, whatever be the nature of it, it is not to be considered scandalous.(17)

A trustee or incumbrancer interested only in part, (so also an heir at law,) always answers so much of the bill as applies to him, and need not answer the rest of it.(18)

A defendant is not bound to answer interrogatories not supported by substantive allegations in the bill; but if he does answer, and the plaintiff replies to the answer, it is put in issue properly.(19)

\*I. *Usual answer of an Attorney-General.*(20)

(For the title, see form No. 2, p. 563.)

This defendant answering saith that he is a stranger to the several matters and things in the said complainant's said bill of complaint contained; And this defendant further saith that he claims such rights and interests under, &c. [*the will of R. S. deceased in the said bill stated*] for and on behalf of his Majesty as this honorable court shall be of opinion that his Majesty is justly entitled to.

[ \*572 ] \*II. *Answer of the Attorney-General where the plaintiff was alleged to be illegitimate.*

(For the title, see form No. 2, p. 563.)

This defendant(21) saving and reserving to himself on behalf of his Majesty now and at all times, &c., answering saith that he is a stranger to all and singular the matters and things in the said com-

(16) *Holford v. Burnell*, 1 Vern. 448; *sed quære*, if the bill is afterwards amended; see 1 Ves. jun. 209 a, 2d edit.; 6 Ves. 555; 2 Madd. Ch. Pr. 370.

(17) *Coffin v. Cooper*, 6 Ves. 514; *Smith v. Reynolds*, Mos. 70.

(18) *Cooper*, R. 215.

(19) *Attorney-General v. Whorwood*, 1 Ves. sen. 534, 8.

(20) The Attorney-General may, in his discretion, put in an answer, or refuse to answer; but if he refuses to put in any answer, the bill may be taken *pro confesso*. No process of contempt can go against the Attorney-General, nor can exceptions be taken to an answer put in by him. Where the Attorney-General puts in the common answer he may afterwards move to withdraw it and put in a new answer; 2 Madd. Ch. Pr. 335; 1 Fowl. Ex. Pr. 401.

The introductory words of course and the general conclusion of an answer (see sections 2 and 4, *antea*,) are unnecessary in the answer of an Attorney-General; although in the forms of answers by the Attorney-General, inserted in the former edition of this work, the commencement of those clauses is inserted.

(21) See note (20), *antea*, p. 571.



plainant's bill of complaint contained, and therefore leaves the said complainant to make such proof thereof as he shall be able; And this defendant further answering saith that he insists on behalf of his Majesty on all such right title and interest in the premises in the said bill of complaint mentioned as his said Majesty shall appear to have therein, and this defendant humbly submits the same to the judgment order and direction of this honorable court, and also humbly prays that this honorable court will take care of his Majesty's right and interest in the premises. And this defendant denies, &c. Without that, &c.

J. M.

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III. *The answer of the Attorney-General where a testator died without leaving an heir at law.*

(For the title, see form No. 2, p. 563.)

This defendant(22) now, &c. answering saith it may be true for any thing this defendant knows to the contrary that I. T. A. in the complainant's bill named was seised in fee simple of such real estates as therein mentioned, and that he died at or about the time in the said bill in that behalf mentioned without leaving an heir at law, but whether the said I. T. A. duly made and published such or any other last will and testament as in the said bill mentioned, or whether if he so did he the said I. T. A. was of sound mind memory and understanding at the time of making and publishing the same, or whether the same was duly executed and attested, &c., or whether the said complainant is so or otherwise entitled to the said estates as in the said bill in that behalf mentioned, this defendant being an entire stranger to the several matters aforesaid cannot set forth but leaves the said complainant to such proof thereof as he shall be advised to produce; And this defendant on behalf of his Majesty insists that if the said I. T. A. died without leaving any heir at law and without duly executing his will and testament in writing in such manner as by law is required for devising real estates, in that case his Majesty has become entitled by escheat to all the estates of which the said I. T. A. died seised.

W. A.

(22) See note (20), antea, p. 571.

*\*IV. Answer of the Attorney-General insisting on a title by escheat in the crown, in case a testator died without leaving an heir at law, and without having made a will valid to pass real estate.*

*(For the title, see form No. 3, p. 563.)*

This defendant(23) saving, &c. answereth and saith that he is a stranger to all and singular the matters and things in the complainant's said bill of complaint contained, and submitteth the same to the judgment of this honorable court; but insists on his majesty's behalf that in case it shall appear that Sir D. D. late of, &c. deceased in the complainant's bill named, died without leaving any person or persons a subject or subjects of Great Britain his heir or heirs at law, and without having duly made and published his will and testament in the presence of three credible witnesses and with all the solemnities of law requisite to devise or pass real estate at the time of his being of sound and disposing mind memory and understanding, that then and in such case his majesty is well entitled by escheat to all and singular the freehold messuages lands tenements and hereditaments of which the said Sir D. D. died seised or entitled in fee simple; And therefore this defendant prays that this court will take care of such right and interest if any as shall appear to be in his Majesty. Without that, &c.

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*\*V. Answer of the trustees and executors under the will of a testator who had contracted for the purchase of an estate to a bill for specific performance; the defendants insisting that the original agreement had been abandoned on account of the defects of title, and the delay which had taken place, and also of the deterioration in value of the estate; but also insisting (in case the opinion of the court should be against them,) upon the benefit of a subsequent agreement for an abatement in price according to the terms expressed in a letter written by the purchaser.*

The joint and several answer of T. S. and A. M. two of the defendants to the original bill of complaint and bill of revivor of J. N. widow and T. N. complainants, and the joint and several answer of the same defendants to the bill of revivor of the said N. T.

Do not know whether the plaintiffs were seised of such

[ \*574 ]

These defendants, &c. [see form No. 2, antea, p. 565,] answer and say they do not know and cannot set forth as to their belief or otherwise whether the said complainants in the said original bill named or either of them were or was at any time seised possessed \*of or well

entitled to such freehold and leasehold estates as in the said bill mentioned for such estates as therein mentioned, or what estates or interests in particular they or either of them had or has therein respectively, but these defendants believe that the said complainants in the original bill or one of them were or was in possession of such estates and claimed such interest therein as are mentioned in the said bill; And these defendants say they believe it to be true that the said J. N. deceased and the said complainant T. N. were desirous of selling the said freehold and leasehold estates, [*and that they offered the same for sale subject to certain particulars, &c., (but for their greater certainty, &c., refer thereto,) and that they were put up to sale but not sold, &c., and that the said J. N. and T. N. authorized R. W. to sell the estates by private contract;*] and that D. M. in the said bill named and now deceased applied to and agreed with the said R. W. as the agent of the said J. N. and the said complainant T. N. for the purchase of the said estate and premises at or for the price or sum of 8000*l.*, but whether or not subject to such terms and stipulations as in the said bill stated, or what were the terms of such agreement these defendants are unable save as hereinafter mentioned to set forth, and except that it appears from a letter of the said D. M. that the purchase was to be completed on the 14th of February 1821; but these defendants say that no agreement in writing was ever made or signed by the said J. N. and the said complainant, or by the said R. W. on their behalf, or by the said D. M. concerning the purchase of the said estate and premises or any part thereof; And these defendants severally say they do not know and have no information whether the said D. M. had or not previously heard of the intended sale by auction, or that the said estate and premises were not sold, though they think it probable that he had heard of such intended sale, and that the same had not been effected; And these defendants further say they do not know and cannot set forth as to their belief or otherwise whether any printed particulars or conditions of the sale hereinbefore mentioned or any other sales were or not during the treaty for the said purchase or at any other time delivered to the said D. M. by the said R. W. or by any other person, nor whether the said D. M. did or not peruse and consider any particulars and conditions of sale; And these defendants further say they admit it to be true that the said R. W. was the solicitor and agent employed as well by the said D. M. as by the said J. N. and the said complainant T. N. in and about the said purchase; And these defendants severally further say they believe it to be true that the said R. W. did as the solicitor or agent of the said J. N. and of the said complainant T. N. prepare at their expense an abstract or what purported to be an abstract of their title to the said estate and premises, but which as these defendants believe was very imperfect and inaccurate; and that the said R. W. shortly afterwards sent the said abstract to R. G. B. in the same bill mentioned to peruse and advise thereon on behalf of the said D. M., and that the said R. G. B. made numerous objections and inquiries respecting the title of the said estate \*and premises; and that the said objections and inquiries required considerable research in order to obviate and answer them; And these

estates as in the bill mentioned, but believe that they were in possession thereof, and claimed such interest therein as in the bill stated;

Believe that they were desirous to sell,

and that D. M. the defendants' testator agreed with the plaintiff's agent to purchase the same for 8000*l.*, but the terms of such agreement they are unable to state, except as appears from a letter; but say that no agreement in writing was ever signed.

Do not know whether D. M. had heard of the intended sale by auction; nor whether any printed particulars were delivered to or perused by him.

Admit that R. W. was the solicitor and agent of D. M. and the plaintiffs;

Believe that R. W. prepared an abstract of the plaintiff's title which they believe was very imperfect; that he sent the same

[ \*575 ]

to counsel to

peruse on behalf of D. M., and that numerous objections were made.

Admit certain letters were sent by D. M. to R. W.

Do not know whether a letter was sent by D. M. in reply to a communication from R. W.

Believe that the estate was conveyed in mortgage to T. P., and has become absolute at law in him.

Believe that R. W. requested W. and H. to manage the business relating to the said purchase; that a new set of abstracts was prepared by Mr. H., with the documentary evidence;

And that D. M. deposited his purchase-money in a bank, but that the defendants know nothing as to the proposal stated in the bill;

Nor do they know whether Mr. H. was in expectation of receiving the draft from counsel;

But believe

[ \*576 ]

that he applied to D. M. to advance the ad valorem duty,

defendants further say they believe it to be true that the said D. M. wrote and sent to the said R. W. such letters, &c. &c. as in the said bill stated, but for their greater certainty as to the said letters these defendants crave leave to refer to the same when produced; And these defendants further severally say they do not know and cannot set forth as to their belief or otherwise whether the said letter in the said bill mentioned to bear date the 7th day of February 1821 or whether any other letter was or not sent by the said D. M. in reply to such communication of the said R. W. as in the said bill mentioned, save as appears from such letter; And these defendants further say they have been informed and believe it to be true that the said estate and premises were by such indentures of lease and release as in the said bill mentioned together with other freehold hereditaments conveyed to the said T. P. in mortgage in such manner as in the said bill mentioned, and that the estate and interest of the said T. P. in the said mortgage premises has become absolute at law, but for their greater certainty as to the said indentures these defendants crave leave to refer to the same when produced; And these defendants further say they believe it to be true that the said R. W. did upon such occasion as in the said bill mentioned request Messrs. W. and H. therein named to manage the business relating to the said purchase, and that the said Messrs. W. and H. were the solicitors of the said T. P. and complied with such request as aforesaid, and that the said Mr. H. had several interviews with the said R. G. B., and that in consequence of the requisitions of the said R. G. B. the said Mr. H. found it necessary to prepare and did prepare at the expense of the said J. N. and of the said complainant T. N. a new set of abstracts of their title to the said freehold and leasehold estates, and that the said Mr. H. laid the same before the said R. G. B. together with such pedigree certificates and other documents as in the said bill mentioned; And these defendants severally further say they believe it to be true that the said D. M. did deposit in such bank as in the said bill is mentioned the sum of 8000*l*. the purchase-money agreed to be paid by the said D. M. for the said estate and premises, but whether or not such proposal as in the said bill stated or any other proposals whatever was or were ever made by the said Mr. H. to the said D. M., and whether or not the said D. M. declined according to such proposal or proposals, these defendants are unable to set forth as to their belief or otherwise; And these defendants severally further say they do not know and cannot set forth as to their belief or otherwise whether or not the said Mr. H. was in daily expectation of receiving such draft as in the said bill mentioned or any other draft from the said R. G. B. or any other person, but these defendants say they believe that the said Mr. H. did apply to the said D. M. to advance the ad valorem duty on the intended conveyance, and that the ad valorem duty amounted to the sum of 90*l*., and was accordingly on the — day of — paid by the said D. M. to the \*said Mr. H., but whether such application by the said Mr. H. was in consequence of such expectation as aforesaid these defendants are unable to set forth as to their belief or otherwise; And these defendants severally say they do not know and cannot set forth as to their

belief or otherwise [*whether W. returned to L., and H. resigned the business and paid over the 90l.;*] And these defendants further say they do not know and cannot set forth as to their belief or otherwise whether or not the principal or any objections which had arisen on the title of the said J. N. and of the said complainant T. N. were ever removed or answered to the satisfaction of the said R. G. B., but these defendants say they believe it to be true that at or about such time as in the said bill mentioned the draft of the conveyance of the said estate and premises was received by the said R. W. from the said R. G. B. with some very important requisitions as to the title which had not been then supplied, and that it was the opinion of the said R. G. B. that a good title could not be made unless the different objections which he had discovered in and to the title were well and satisfactorily answered, and that the draft of the intended conveyance was sent by the said R. G. B. under the expectation that the said R. W. as the agent for the vendors would be able to supply such defects, but without any intention that the said conveyance should be executed by any of the parties until the objections which had been raised by him were satisfactorily removed; And these defendants say they do not know and cannot set forth as to their belief or otherwise whether the said R. W. or any other person by his order or direction did or not submit such last-mentioned remarks and requisitions or any of them to the said D. M. for his consideration, or whether the said D. M. did or not consider the same, but these defendants say they do not believe that the said D. M. ever waived all or any of the objections to the title which had been raised by the said R. G. B., or that he accepted the title of the said J. N. or of the said complainant T. N. or either of them, or that he testified his approbation of the said or any other draft of conveyance; And these defendants say that it is very improbable that being himself no lawyer, and having consulted a conveyancer for the purpose of having a safe and marketable title to the said estate and premises, the said D. M. should on his own responsibility have waived objections which by the said R. G. B. were considered material and necessary, to the title of the said estate and premises so agreed to be purchased by him; And these defendants say they do not know and cannot set forth as to their belief or otherwise whether the said R. W. or any other person by his order or direction did or not leave the said or any other draft with the said Mr. H. or with any other person in his service or employ, or whether the said Mr. H. did or not approve thereof on behalf of the said T. P. the mortgagee, or whether the said draft was or not approved of by all such other persons as are in the said bill mentioned or any of them; And these defendants further say they believe it to be true that such indentures of lease and release and assignment of such respective dates and made between such persons as in the said bill mentioned, were engrossed from the said draft of conveyance, and executed by such several persons as in the said bill stated, and that the said T. P. married about such time as in the said bill stated and that from such circumstances as therein mentioned, the said Mr. H. had reason to doubt his sanity and that he thereupon thought it advisable to defer procuring the execution

which D. M. accordingly did.

Do not know whether any objections to the title were removed to the satisfaction of counsel;

But believe that the draft conveyance was received from him by R. W.;

And that it was the opinion of counsel that a good title could not be made, unless the objections were satisfactorily answered, and that the draft was sent in the expectation that R. W. would be able to supply the defects, but that it was not intended to be executed until the objections were removed.

Do not know whether the requisitions made by counsel were submitted to D. M. but believe that he never waived any objections to the title;

Reasons for such belief.

Do not know whether R. W. left the draft with Mr. H. nor whether he approved thereof on behalf of T. P.

[\*577]

Believe that certain indentures of lease

and release were engrossed and executed by such persons as in the bill stated; And that T. P. married, and that Mr. H. had reason to doubt the sanity of T. P. and deferred procuring the execution of the deeds by him.

That a commission of lunacy issued against T. P., And that the return made by the jurors was afterwards declared insufficient.

Believe that another commission issued, and that the inquisition found as in the bill stated.

Believe that on 14th February, 1821, D. M. was prepared to pay his purchase-money;

And by the advice of R. W. deposited the same in a bank, where it lay without producing interest, on the understanding that the purchase was to be immediately completed, but that in August the vendors were not in a situation to complete.

[ \*578 ]

That the difficulties were then unre-

of the said indentures by the said T. P. until he thought that the said T. P. was competent to execute the same, and that shortly afterwards a commission issued to inquire of the lunacy of the said T. P. and that there was considerable difference of opinion among the jurors, and that the said T. P. was returned by twelve of the said jurors to be a lunatic, in such manner as in the said bill stated, and that such return has since been declared insufficient by this honorable court; And these defendants further say they believe it to be true that such other commission as in the said bill mentioned was issued to inquire of the lunacy of the said T. P., and that the inquisition found in such manner as in the said bill mentioned, and that several proceedings have taken place in the matter of the said lunacy respecting the custody of the estate of the said T. P.; And these defendants severally say they believe that on the 14th of February 1821 the said D. M. was prepared to pay his purchase-money for the said estate, and offered to pay the same upon the sale being completed on behalf of the vendors, and that they being unable to complete, the said D. M. by the advice of the said R. W. deposited his money in the bank mentioned in the bill, for security, where the same lay without producing interest, it being understood that the purchase would be immediately completed, but that nevertheless in the month of August 1821 the vendors were not in a situation to complete the same; And these defendants further say that in the said month of August the difficulties in the completion of the title to the said estate were as these defendants believe still unremoved, and the property had become greatly deteriorated since the said D. M. had agreed to purchase the same, and that the said D. M. was put to very great inconvenience by the delay on the part of the vendors in completing the sale, not only by the loss of interest on the purchase-money, but by losing the opportunity of improving the property which he might have done if the sale had been completed, and also by his inability to grant a lease of the property to the tenant in possession, who was willing to have taken a lease, but being unable to obtain the same quitted the estate, and under the circumstances aforesaid these defendants believe that the said D. M. on the first of August 1821 wrote and sent to the said R. W. as solicitor for the vendors, a letter to the purport or effect following, (that is to say :) "Dear Sir.—You can have no conception of the deterioration of the value of E. by the delay in making the conveyance for so long a period after what was agreed upon, and unless I can have a title by the 13th instant, I must give up all intention of purchasing," &c. &c. As in and by such letter if produced to this honorable court would appear; And these defendants further say they believe from the letter next hereinafter stated, that the said D. M. had been assured that the said sale should be immediately completed on the part of the vendors, and that he therefore waited for some time in expectation thereof, but that such expectation not being fulfilled, he wrote \*and sent another letter to the said R. W. bearing date on or about the 25th of September 1821, in the words or to the purport or effect following, (that is to say :) *[being a letter which communicated the difficulties in the way of completion, and stated the loss which he*

was sustaining by getting no interest for his money, &c. &c. and stating that if not completed he must give it up.] As by such letter if produced would appear; And these defendants severally further say they believe that the vendors were satisfied that they were not in a situation to enforce against the said D. M. the performance of the said contract, and that they were willing therefore to make a new contract with him or to modify the old contract, and that they entered into a negotiation with him for that purpose, and that the said D. M. being urged as to the sum which he would think a reasonable deduction from the sum of £8000 which he had originally agreed to give for the said estate and premises, wrote and sent to the said R. W. a letter bearing date on or about the 1st of October 1821, in the words, &c. [*being a letter, which from its language gave a coloring to the defence here set up; that a new treaty was on foot, and required the execution of an agreement, and proposing terms the same in substance as the memorandum hereinafter mentioned and required immediate possession; but if these terms were not complied with, that he relinquished all intention of purchasing.*] As by such letter, &c. &c.; And these defendants say that several letters passed between the said D. M. and the said R. W. respecting the arrangement so proposed by the said D. M. and that after some discussion the said R. W. on behalf of the vendors and by the express authority of the said J. N., acceded to the terms so proposed by the said D. M., and wrote and signed and sent to the said D. M. a letter dated the 17th of October 1821 declaring such acquiescence; And these defendants further say that the said R. W. at a meeting which took place at the house of the said D. M. and as the authorized agent of the said J. N. and of the said complainant, drew out a memorandum of the agreement to be entered into between the said D. M. and the said J. N. and the said complainants, according to the terms so arranged as aforesaid, the particulars whereof were as follows, (that is to say:) “£500 to be allowed to Mr. H. out of the purchase-money for the non-completion of the purchase;—that Mr. M. should be entitled to the interest of £7500 the remainder of the purchase-money from the 14th day of February 1821 till the time he takes possession of the estate or enters into the receipt of the rents, after the rate of 5 per cent.;—that Mr. N. shall be entitled to such interest as the purchase-money may have made in the bank, and also to the rent of the estate to be calculated from the 14th of February 1821 to the date of the agreement when entered into, from which time Mr. M. is to enter into possession and to receive the rents;—that Mrs. N. shall be entitled to such interest as the purchase-money shall hereafter make, until the sale can be completed, and the purchase-money shall either be invested in the bank or on government securities as Mr. M. and Mrs. N. may agree on.” As in and by such memorandum if produced would appear; And these defendants severally further say they believe that the said R. W. as solicitor for the vendors, undertook to prepare or to have \*prepared a formal agreement and declaration of trust by way of deed in conformity with the said memorandum, but that the same was not prepared for some time after such meeting took place as

moved, and the property had become greatly deteriorated, and that D. M. was put to great inconvenience by the delay, and stating the circumstances under which the defendants believed that D. M. wrote to R. W. the letter stated by the defendants.

Believe from the letter next stated that D. M. had been assured that the sale should be immediately completed.

Believe that the vendors were satisfied that they could not compel a specific performance, and were willing to make a new contract or to modify the old one, and entered into a negotiation for that purpose;

And that D. M. being urged as to the deduction he required, wrote to R. W. the letter next stated.

That several letters passed between D. M. and R. W. respecting the proposed arrangement; And that R. W. on behalf

[\*579] of the vendors acceded to the

terms proposed, and wrote a letter declaring such acquiescence.

Say that R. W. at a meeting at D. M.'s house drew out a memorandum of agreement of the terms arranged between the parties.

Believe that R. W. undertook to prepare a formal deed of declaration of trust in conformity with the said memorandum, but when prepared it differed in most essential particulars, and that D. M. refused to execute the same, and wrote to R. W. the letter next stated.

Say they are entirely ignorant as to whether D. M. made any communications to R. W. as in the bill stated or otherwise, and as to applications made to D. M. and the other defendants.

Submit whether D. M. did enter into a valid agreement for purchase.

Say they are entirely ignorant as to a

[\*580]

lease held by one J. D. fur-

aforsaid, and that when prepared, it differed in most essential particulars from the memorandum on which it was to have been founded, and that under such circumstances the said D. M. refused to execute the same, and on or about the 5th day of November 1821 wrote and sent to the said R. W. a letter in the words and to the effect following; (that is to say), "Dear Sir.—I received your's with draft agreement proposed to be executed, and began by making a short interlineation, but reading further I found the whole quite different from our agreement, which you will see by a perusal of my letters of the 1st, 10th, and 13th, all addressed to you; and with respect to having the title uncompleted for two years and then subjected to be annulled is most unreasonable, as it would bind me from either leasing for any length of years or improving the property, or by doing so, subjecting me to suffer great loss of interest and outlay, which are terms so different to our original agreement that I can see no possible prospect with any safety to myself of ever accomplishing the purchase, I must therefore again declare myself off from so uncertain and hazardous an attempt to purchase E., as I have already expressed in my letters as above stated; indeed by what Mr. B. last says, it does not appear that Mrs. N. has any right to sell under any such incumbrances and uncertainties as she unfortunately labors under." As in and by such letter when, &c.; And these defendants further answering say they do not know and cannot set forth as to their belief or otherwise save as hereinbefore mentioned, whether the said D. M. did or not inform the said R. W. to such effect as in the said bill mentioned, or whether he made any other communication of the like nature to the said R. W., or whether the said J. N. and the said T. N. or any other person ever made any such applications requests or offers to the said D. M. and the other defendants thereto as in the said bill mentioned; And these defendants say they do not know and cannot set forth as to their belief or otherwise, whether the said J. N. and the said complainant T. N. or either of them have been always or at any time anxious to procure such conveyance and assignment as in the said bill mentioned. [*Then followed answers to interrogatories relating to T. P. the mortgagee.*] And these defendants submit to this honorable court whether the said D. M. did or not enter into a valid and binding agreement for the purchase of the said freehold and leasehold estates; And these defendants severally further say they do not know and cannot set forth as to their belief or otherwise, whether the lease under which J. D. in the said bill named held the whole or any part of the estate, &c. [*as to whether D.'s lease was delivered to D. M. and whether he treated with him for a renewal,*] further than these defendants believe that the said D. M. before he abandoned the said purchase had entered into some treaty with the said J. D. for continuing him the tenant of the property in case the said D. M. became the purchaser thereof; And these defendants further answering say they believe it to be true, &c. [*that D. M. agreed to take timber at a valuation, but they do not know whether according to particulars \*of sale and answering the interrogatories to this point.*] And these defendants severally further say they do not believe that the said D. M. did withdraw the said



sum of £8000 out of such bank as in the said bill mentioned, and on the contrary these defendants believe that such money was lying in the hands of the said bankers in the month of ——— when they failed, and that a heavy loss was sustained by the said D. M. in consequence, and that the money produced no interest while the same lay in the hands of the said bankers; And these defendants further answering say they admit it to be true that the said D. M. did duly make and publish his last will and testament in writing, executed and attested in such manner as to pass real estates by devise, of such date, &c., and that the said will contained such devise, &c., but for their greater certainty as to the said will and the contents thereof, these defendants crave leave to refer to the same or the probate thereof when produced, [*admission of testator's dying without revoking—proof,*] and that they have possessed themselves of the said testator's personal estate or some part thereof, for which in case this honorable court should be of opinion that the said complainant T. N. has any claim, then these defendants are ready to account to the extent of their several and respective receipts and payments in respect thereof, but whether such personal estate is much more than sufficient to pay and satisfy all the debts legacies and funeral expences of the said testator these defendants not having yet obtained all the accounts of the persons to whom the said D. M. was indebted cannot set forth; And these defendants further say they believe it to be true that the said J. N. departed this life at or about such time as in the said bill mentioned, but whether or not she made and published her last will, &c. or of any other date or to any other purport or effect, or whether the said J. N. did or not appoint such persons as in the said bill named executors of her said will, or whether she ever revoked her said will, except so far as the same is revoked by the said codicil, or whether the executors in the said codicil named renounced the probate of the said will and codicil and declined to act in the trusts thereof, or whether the said complainant hath obtained such letters of administration as in the said bill mentioned to be granted to him by and out of such court as therein mentioned, and is now the legal personal representative of the said J. N. deceased, these defendants severally say they do not know and cannot set forth as to their belief or otherwise; And these defendants severally say they do not know and cannot set forth as to their belief or otherwise whether or not by such order of this honorable court as in the said bill mentioned the said M. A. has been appointed committee of the estate of the said T. P., or whether a grant thereof afterwards passed the great seal of Great Britain accordingly, or whether the said M. A. as such committee aforesaid, claims to be entitled to all the estate and interest of the said T. P. of and in the aforesaid mortgage and the hereditaments and premises included therein; And these defendants submit to this honorable court that under the circumstances hereinbefore mentioned, and inasmuch as if any such agreement as mentioned, in the said bill was ever so made as to be binding upon the said D. M. which these defendants do not admit, the same \*was afterwards in the manner hereinbefore mentioned waived and abandoned, the said complainants are not entitled to any such relief

ther than they believe that D. M. had treated with him as to his continuing tenant.

Do not believe that D. M. withdrew the £8000 out of the bank, but on the contrary believe that the same was in the bankers' hands at the time of their failure.

Admit D. M.'s will, and the probate thereof by the defendants,

And that they have possessed his personal estate for which they are ready to account, but are unable to state whether such personal estate is more than sufficient to pay all debts.

Admit the death of the plaintiff J. N. but not her will and codicil thereto, or that the executors renounced probate or that the plaintiff T. N. has obtained letters of administration.

Say they are ignorant whether M. A. has been appointed committee of the estate of T. P.,

or whether he claims the lu-

[ \*581 ]  
natic's interest

in the mortgage security; and submit that as if any agreement was made binding upon D. M. the same was abandoned, the plaintiffs are not entitled to the relief prayed, Or that if the defendants are bound to complete, then they insist upon the benefit of the second agreement, according to the terms of D. M.'s letter of the 1st October, 1821; And say they are advised that the plaintiff cannot make a good title, and in the event of being compelled to purchase, they pray a reference to the Master to inquire into the title.

as is prayed by the said bill against these defendants; but if this honorable court should be of opinion that these defendants as representatives of the said D. M. are bound upon any terms to complete the said purchase, then these defendants insist upon the benefit of the agreement subsequently made between the said D. M. and the vendors, the terms of which are expressed in the said D. M.'s letter of the 1st of October 1821; And these defendants further say they are advised that the said complainant cannot make a good title to the estate and hereditaments hereinbefore mentioned, and in the event of their being compelled to purchase the said premises they pray a reference to one of the Masters of the court to inquire into such title; And these defendants deny, &c. [see sect. IV. *antea*, p. 569.]

\*VI. *Answer of one of three trustees for sale, defendants to a bill by a purchaser seeking to set aside the contract, the defendant insisting that although the incumbrances on the estate are numerous, and that a recovery which had been previously suffered was in dispute in another suit, yet that the defendants are able to procure a good conveyance to be executed to the plaintiff, and that he ought to be compelled to complete his contract.*(24)

[*Answer of defendant C. V.—For the form of title and commencement, refer to sect. I. and II. p. 563 and 565.*]

Saith that he and his co-defendants, being duly constituted trustees for sale, a treaty was entered into and an agreement concluded for sale of certain estates to the plaintiff;

And that the same was reduced into writing and signed, and was to the effect stated in the bill.

*Saith* that defendant, together with M. A. T. and S. T. S. the two other defendants to the said bill, having been as they were advised duly constituted and appointed trustees for the sale of the hereditaments and premises in the said bill mentioned, and believing that they had a good right and authority to sell the same, and that they could execute or procure to be executed a good and sufficient conveyance thereof in fee-simple to a purchaser, and being desirous therefore of executing their said trust, a treaty was accordingly in or about the month of July 1821 entered into between defendant's said co-trustees or one of them and the said plaintiff, and an agreement was afterwards concluded between them for the sale of the said hereditaments and premises to the said plaintiff at or for the price or sum in the said bill mentioned; and the said agreement was thereupon reduced into writing, and defendant admits signed by the said M. A. T., S. T. S. and the said plaintiff, and was as defendant believes in the words and figures or to the purport and effect in the said bill mentioned, as far as the same is therein set forth, nevertheless defendant for his greater certainty craves leave to refer to the same when produced to this court;

*Saith* that the said agreement so signed was sent to defendant for \*his approbation and signature, and defendant did accordingly approve of and sign the same subject only to a few marginal notes thereon by way of qualification on certain collateral points as to costs and the extent of the covenants to be entered into on the part of defendant and his co-trustees, as by the said agreement when produced, and to which defendant for his greater certainty refers, when produced, will more fully appear;

*Saith* that except as aforesaid he did not personally act in such treaty of sale of the said premises to said plaintiff, such treaty having been carried on in the county of Y. by his co-trustees there, and defendant residing in London and not having interfered in the contract any further than by some previous correspondence with his co-trustees, and by testifying his approbation of and subsequently signing the contract, neither did defendant pretend or allege himself to be in the said month of July or at any other time seised of or otherwise well entitled for an estate of inheritance in fee-simple to the manor and other hereditaments in the said bill mentioned, or that he and the said other defendants could show and make out a good clear marketable title to the said premises, or that they had good right and authority to sell the same, and could execute or procure to be executed a good and sufficient conveyance of said hereditaments free from all incumbrances except as in the said bill mentioned, or otherwise except as aforesaid;

*Saith* that except as he is informed by the said bill he is wholly unable to set forth whether or not the said plaintiff was at the time in the said bill mentioned anxious to purchase a residence and estate in that part of the country where the said manor and other hereditaments were situate, or whether or not he relied upon such alleged statements as are in the said bill mentioned to have been made by this defendant's said co-trustees;

*Denies* that he ever made any such statements to the said plaintiff;

*Saith* that he believes it to be true that two parts of the said agreement hereinbefore mentioned were prepared, and that one of such parts was taken and kept by defendant and his said co-trustees, and is now in their power, but whether or not defendant signed both parts of the said agreement he does not recollect, and except as he is informed by the said bill, is wholly unable to set forth as to his belief or otherwise whether the other part of said agreement was taken and kept by said plaintiff or is now in his possession;

*Saith* he does not know but has been informed and believes that a full true and correct abstract of the title of defendant and his co-trustees to the said manor and hereditaments was delivered to plaintiff or his solicitor within one month or thereabouts from the date of the said contract, and that such title has in fact been approved of by or on the part of the said plaintiff;

*Saith* that except as aforesaid and except that he has been informed and believes that in the first instance an abstract of the title to said estate as deduced unto F. M. T. the owner was sent from L. to the solicitors at Y. employed by the said defendants M. A. T. and S. T. S. on the 7th day of July 1821, and that a second abstract con-

*Saith* that such agree-

[ \*582 ]

ment was sent to him for his signature, and which he accordingly signed.

*Saith* that he did not personally act in the treaty.

*Saith* that he is unable to state whether the plaintiff was anxious to purchase a residence, or whether he relied on the statements alleged in the bill.

*Denies* having made any such statements.

*Believes* that two parts of the agreement were prepared, and that one was taken by the defendants, but is unable to state whether the other was taken by the plaintiff.

*Has* been informed and believes that a full abstract was sent to

the plaintiff, and that he has approved of the title.

[\*583]

Saith that except as he has been informed as to three abstracts being sent, he knows not whether a partial abstract only was delivered as stated in the bill.

Does not believe that any material deeds were omitted.

Believes that F. M. T. has in another suit endeavored to impugn the validity of a recovery suffered of the estates sold, but believes that such recovery is valid.

Does not believe that there are any valid objections to the title, but believes that the title has been approved of on the part of the plaintiff, and that the defendants are entitled to an equitable estate in fee-simple.

Cannot state whether plaintiff was or not aware of the former suit, or of the validity of the recovery being disputed, but insists that if he was not informed thereof, yet that it ought not to prevent the contract from

taining an account of the incumbrances on that estate was sent from L. to the same solicitors on the 11th day of the same month \*of July in the same year, and that a third abstract of the title to the S. estate being part of the trust hereditaments, was delivered to the said solicitors at Y., and were delivered by them to the said plaintiff or his solicitor, he is unable to set forth as to his belief or otherwise whether or not on the 12th day of July last, or at any other time, a partial abstract only of the title-deeds relating to parts of the said hereditaments comprised in the said agreement was delivered to the solicitors of the said plaintiff, or how otherwise, or whether it was not on the 19th of the same month and not before that an abstract of other deeds relating to the same part of the said hereditaments or any other parts was delivered to the solicitor of the said plaintiff, except as aforesaid;

*Saith* that he does not believe that any of the deeds material to the title to the said premises are omitted to be set forth in the same;

*Saith* he has been informed and believes that said F. M. T. in his answer in the suit in the said bill mentioned, has endeavored to impugn the validity of a recovery suffered by him and his late father, of the said hereditaments and premises, but defendant saith he verily believes that such recovery was duly and properly suffered, and that except as aforesaid the validity of the same or of any other recovery, or of the deed leading the uses thereof, is not disputed in the said suit;

*Saith* he does not believe that there are any good or tenable objections to the title to the said manor and other hereditaments comprised in the said agreement, but on the contrary defendant believes that such title has been approved of by or on the part of the said plaintiff, and that defendant and his said co-trustees were in fact at the time of entering into the said agreement and are now seised or well entitled in equity for an estate of inheritance in fee-simple of or to the manor and other hereditaments aforesaid.

*Saith* he is wholly unable to set forth as to his belief or otherwise; except as he is informed by the said bill, whether or not at the time of entering into the said agreement hereinbefore mentioned plaintiff was aware or had been informed that such suit (as in the said bill is mentioned) was depending, or that the validity of such recovery as aforesaid was disputed in the manner hereinbefore mentioned, but defendant saith there being as defendant believes no well founded objection to the said recovery, he submits and insists that if the said plaintiff was not informed thereof at such time as aforesaid (but which defendant does not admit,) yet that same ought not now to prevent the said contract from being completed;

*Admits* that the incumbrances upon the said hereditaments and premises are numerous and great, but defendant hath been informed by his co-trustee M. A. T. that the plaintiff was at the time of entering into the said agreement fully apprized and aware of this circumstance, and of the embarrassed state of the trust property, and that it was sold for the benefit of the numerous incumbrancers thereon, but the amount thereof prior to the date of the conveyance to the trustees defendants upon trust to sell was not so great as defendant be-

believes as to exceed the amount of the purchase-money agreed to be given by the said plaintiff; being completed.

\**Saith* he hath been informed and believes that such of the said incumbrancers upon the said hereditaments and premises as are necessary parties to make a perfect conveyance thereof to the said plaintiff, are willing to join therein;

*Submits* and insists that he and his co-trustees are able to procure a good and sufficient conveyance of the said premises to be executed to the said plaintiff, and that under such circumstances, and the said plaintiff having (as defendant believes) long since approved of the title to the said estates, he ought not to be released from his said contract, but ought to be compelled by the decree of this court to complete the same on his part:

*Saith* that the said plaintiff did not according to the best of defendant's recollection and belief make any applications or requests to defendant as in the said bill mentioned;

*Denies* that he had threatened to commence or prosecute any action at law against the said plaintiff for breach of the said agreement or otherwise; but defendant nevertheless submits that the said plaintiff is bound to perform the same;

*Denies* combination, &c. [*see sect. IV. antea, p. 569.*]

sary parties are willing to join. Submits that defendants are able to procure a good be executed, and that the plaintiff ought not to be released from the contract. applications being made. Or that he has threatened to commence any action at law.

[\*584

Admits that the incumbrances were numerous, but has been informed that plaintiff was aware that the property was sold to pay off the same, but does not believe that at the date of the trust conveyance, they amounted to, as much as the purchase-money.

Believes that such of the incumbrancers as are necessary to make a conveyance to the plaintiff. Denies any

VII. *Answer of a trustee under a nuncupative will who had taken out letters of administration to the testator with his will annexed, submitting to account and claiming allowances for sums expended in educating and apprenticing the plaintiff.*

(*For the form of title refer to sect. I. p. 563.*)

This defendant saving and reserving, &c. [*see form No. 1, p. 565,*] answereth and saith he believes it to be true that W. W. the testator in the said bill named did on or about the — day of — duly make and publish his last will and testament being a nuncupative will in manner in the said bill in that behalf mentioned, and that the said will with the signatures in the said bill mentioned is in such words and figures or to such effect as in the said bill in that behalf set forth, but for certainty as to the date and contents of the said will this defendant craves leave to refer to the probate thereof when produced, &c.; And this defendant saith he believes and admits it to be true that the said testator departed this life on or about the — day of the same month of —, and that he at his death left the said complainant and W. W. the younger in the said bill named his two natural sons him surviving as mentioned in the said bill; And this defendant admits it to be true that soon after the said testator's death the said will was in due form proved in the Preroga-

Admits that the testator made a nuncupative will as stated in the bill.

Admits his death leaving two sons the plaintiff and another since dead, and that letters of administration with

the will annexed were granted to the defendant, who has possessed the

[\*585]

personal estate, and paid debts, &c.

and invested the surplus, and laid out the dividends to accumulate (except a part applied to plaintiff's maintenance) in the names of plaintiff and defendant.

Saith that he has laid out certain sums in educating the plaintiff and apprenticing him,

and submits that he ought to have the same allowed him.

Believes that the other son died intestate and without issue, and submits to account.

tive Court of the province of C., and that letters of administration of the goods and chattels rights and credits of the said testator with his said will annexed were duly granted by the said court to this defendant; and that this defendant possessed and received all such parts of the said testator's personal estate and effects as he was able, \*and that he hath thereout paid all the said testator's funeral expenses and debts so far as the same have come to his knowledge and the said legacy of £—— to the said W. W., and that there remained a considerable balance of the said personal estate in his hands; And this defendant saith that he hath laid out all the surplus of the said testator's personal estate which hath come to this defendant's hands, and also the dividends and interest thereof from time to time (except some part thereof which hath been applied to the maintenance of the said complainant as hereinafter mentioned) in the purchase of 3 per cent. consolidated bank annuities in the joint names of this defendant and the said complainant, and in consequence thereof the sum of £—— of the said stock is now standing in their joint names in the books of the Governor and Company of the Bank of England; And this defendant saith that he hath from time to time laid out and expended certain sums in the maintenance and education of the said complainant, and hath lately entered into an engagement with Messrs. G. W. and P. calico-printers at D. to put the said complainant apprentice to them and to pay them the sum of —— as an apprentice fee for the said complainant, and in consequence of such engagement the said complainant is now with the said Messrs. G. W. and P. as an apprentice; And this defendant submits that he ought to have an allowance made to him out of the dividends and interest which have arisen from the surplus of the said testator's estate for all sums expended by him for maintenance of the said complainant as aforesaid and also for the said apprentice fee; And this defendant further saith he believes it to be true that the said W. W. the son hath departed this life intestate unmarried and without issue; And this defendant submits to account for the said personal estate possessed by him, and to transfer the said stock into the name of the Accountant-General of this court as this court shall direct, but craves to have all just allowances made to him in such accounts as well in respect of the said maintenance and apprentice fee as otherwise. Without that, &c. [see sec. IV. *antea*, p. 569.]

T. C. C.

VIII. *Answer of an executor and trustee under a will to a bill for an account filed by a legatee; the executor being also heir at law to the testator, and claiming as such to be entitled to freehold estates purchased by the testator after making his will and codicil, and denying any republication thereof. The defendant having misapplied part of the produce of the real and personal estate, submits to account for the value of the government securities in*

*which the same might have been invested, (referring to schedules annexed.)*

*(For the form of title, vide antea, p. 563, form No. 4.)*

This defendant, &c. [as in form No. 1, p. 565, and note (d), *ib.*] answering saith he admits that the testator S. M. in the said complainant's bill named was at the time of making his will and codicil and at the time of his death seised or entitled in fee-simple of and to certain real estates the names whereof this defendant hath \*set forth in the first schedule to this his answer annexed and which he prays may be taken as part thereof; And this defendant further answering saith that the said testator after making and publishing his said will and codicil, purchased certain other real estates which this defendant hath also specified in the said schedule; And this defendant has never heard nor does he believe that the said testator ever republished his said will and codicil or either of them after making such last-mentioned purchases, and therefore he submits such after-purchased lands descended upon him this defendant as the heir at law of the said testator; And this defendant further answering saith he admits that the said testator was at the time of his death possessed of and entitled to a personal estate consisting of such particulars as in the said complainant's bill mentioned and more particularly set forth in the second schedule to this defendant's answer annexed, and which he prays may also be taken as part thereof; And this defendant further saith he believes that the said testator when he was of sound and disposing mind memory and understanding duly made and published his last will and testament in writing bearing date on or about — in such words and to such purport and effect as in the said complainant's bill mentioned so far as the same is therein set forth; And this defendant further saith he believes that the said testator duly made a codicil to his said will bearing date — to such purport and effect as in the said complainant's bill mentioned, and that such will and codicil were duly executed so as to pass lands of inheritance; And this defendant further saith that the said complainant has in his said bill very shortly stated the said will which this defendant apprehends admits of some doubt as to the true construction thereof, and which said will and codicil are in the following words, (that is to say:) &c. &c.; And this defendant further saith that the codicil to the said will was in the words and figures following, (that is to say:) &c. &c.; And this defendant further answering saith he believes that the said testator S. M. departed this life on or about — without revoking or altering the said will and codicil save as the said will is altered by the said codicil; And this defendant further answering saith he admits that the said testator left this defendant his heir at law, and the said complainant and the other natural children named in the said will and codicil him surviving; And this defendant further answering saith he admits that he this defendant alone proved the said will and codicil in the Prerogative Court of the Archbishop of C., and possessed all the personal estate of the said testator to the amount mentioned and set forth in the

Admits that the testator was seised of real estates, the descrip-

[ \*586 ]

tion thereof set forth in the first schedule, That after making his will and codicil he purchased other estates, and submits that the same descended to the defendant as his heir at law.

Admits that the testator was possessed of personal estate.

Admits also his will and codicil,

setting forth the same more fully, the true construction being doubtful;

Believes that he died without revoking the will and codicil.

Admits that the defendant is heir at law, that he alone proved the will, and possessed the personal estate,

and entered upon and received the rents of the real estates as set forth in the second schedule.

Saith that he has disposed of the real estates which the testator had at the

[ \*587 ]

time of making his will and codicil, and that he employed part of the produce in fulfilling the contracts entered into by the testator, and employed other part in trade.

Reference to the second schedule in which is calculated the amount of government securities which the estate possessed by the defendant would have purchased.

Reference to the first schedule as containing an account of the real estate of which the testator was seised ;

Reference to the second schedule for the particulars of the rental thereof,

and of the rents received by or for the use of the defendant, and of the moneys produced by sale of the estates,

second schedule to this defendant's answer annexed ; And this defendant further answering saith he admits that he hath entered upon the said testator's real estates of which the said testator was possessed at the time of making his said will and codicil, and received the rents and profits thereof for such length of time and to such amount as is mentioned and set forth in the second schedule to this defendant's answer annexed ; And this defendant further answering saith that since the death of the said testator he hath sold and disposed of the said real estates of which the said testator was possessed at the time of making his said will and codicil, the particulars of which and the amount thereof this defendant hath \*set forth in the said second schedule to this his answer annexed ; And this defendant further answering saith that he did employ part of the money arising from the real and personal estate of the said testator in fulfilling such contracts as the said testator was engaged in at the time of his death, and which is accounted for in the said second schedule to this defendant's answer annexed, whereby it will appear what interest profit or advantage hath been made by such moneys so employed ; and this defendant also employed part of such moneys in his trade ; And this defendant further answering saith that he hath in the said second schedule to this his answer annexed calculated the amount of government securities which the said testator's estate come to the hands of this defendant would have purchased if the same had been by this defendant from time to time laid out in government securities, and for which this defendant submits to account as part of the personal estate of the said testator, subject to the demands to which such personal estate is liable ; And this defendant further saith that he hath in the first schedule to this his answer annexed set forth a full true just and particular account of all and every the real estates which the said testator was seised of or entitled to in fee simple at the time of making his said will and codicil, and of which he continued to be seised at the time of his death, with the name or names thereof and of each and every part thereof, and where the same and each and every part thereof is situate ; and in the said second schedule the yearly value thereof and of each and every part thereof, and in whose tenure or occupation the same and each and every part thereof now is and from time to time since the death of the said testator hath been, and under what yearly or other rent or rents, and what part of the time since the death of the said testator this defendant hath been in possession or receipt of the rents and profits thereof and of what parts thereof, and who hath been and for how long time in possession and receipt of the rents and profits thereof and of each and every part thereof ; And this defendant further answering saith he hath in the said second schedule to this his answer annexed set forth a full true perfect and particular account of all and every sum and sums which have or hath at any time and when been received by this defendant or by any other person or persons by his order or for his use for or on account of the rents and profits of the said estates or any part thereof become due since the death of the said testator, or from or on account of the sale of the said estates or any part or parts thereof ; And this defendant further



answering saith he hath in the said second schedule to this his answer annexed set forth a full true and particular inventory of all and singular the goods chattels and personal estate and effects whatsoever which the said testator was possessed of entitled to or interested in at the time of his death, and all the particulars whereof the same consisted, and the natures kinds quantities full true and real values thereof and of every part thereof, together with such particulars as have been possessed or received by or come to the hands of this defendant or of any other person or persons by his order or for his use, and how and in what manner and when and where and by whom and to whom and for how much \*the same and every part thereof hath been sold or disposed of; And this defendant saith he believes that the said complainant attained his age of twenty-one years some time since; And this defendant further answering saith he admits that the said complainant hath made such applications and requests to this defendant as in the said complainant's bill mentioned; And this defendant further answering saith he hath not refused to comply therewith, but as there are some doubts as to the true construction of the said will and several parties entitled to all of whom this defendant is to account, he this defendant is desirous to act in the premises as executor of the said S. M. deceased under the directions and indemnity of this honorable court.

and also of the testator's personal estate, and the application thereof.

[ \*588 ]

Believes that the plaintiff has attained twenty-one. Admits the applications made, but the true construction of the will, being doubtful, defendant is desirous to act under the indemnity of the court.

IX. *Answer of an executrix submitting to act under the indemnity of the court.*

(For the form of title, refer to sect. I. p. 563.)

This defendant, &c. [see form No. 1, p. 565,] answering saith she admits that S. W. the testator in the said bill named was at the time of his death possessed of a considerable personal estate, and particularly of the several sums in the public stocks or funds in the said bill of complaint mentioned; and that the said testator duly made and published his last will and a codicil thereto of such respective dates and to such purport or effect as in the said bill in that behalf stated; but nevertheless, &c.

*Believes* that the said testator did soon after making said will and codicil depart this life without altering or revoking the said will save by the said codicil, or without altering or revoking the said codicil leaving this defendant his widow and such other persons as in the said bill in that behalf named him surviving;

*Admits* that she hath duly proved the said will and codicil in the proper Ecclesiastical Court and hath taken upon herself the execution thereof, and hath by virtue thereof possessed herself of as much of the said testator's personal estate and effects as she has been able to do; And this defendant denies that she ever threatened to sell or dispose of the said stocks funds and annuities in the said will and bill

Admits that the testator was possessed of considerable personal estate;

and also his will, and a codicil thereto;

Believes that he died without altering his will and codicil;

Admits that she has proved the same, and possessed the personal estate, but denies having

threatened to sell any part; mentioned without any regard to the interest of the said complainants in remainder therein, or hath made any transfer of the same;

*Submits* to this honorable court what interest the said complainants are entitled to in the personal estate of the said S. W. by virtue of his said will;

Reference to the first schedule for an account of the personal estate;

[\*589]

And to the second schedule for an account of the application thereof.

Submits to account, and to act under the indemnity of the court.

*Saith* she hath in a schedule, &c. set forth a true and particular account of all the personal estate to which the said testator was entitled at his death, distinguishing what part thereof hath come to her hands or to the hands of any other person or persons \*for her use except such sums as are mentioned in the schedule hereinafter referred to;

*Saith* she hath in the second schedule, &c. set forth an account current between her and the estate of the said S. W., and this defendant hath therein set forth to the best of her knowledge, &c. a full and true account of all sums of money part of the personal estate of the said testator come to her hands, or to the hands of any person or persons to her use and of the application thereof;

*Saith* she is ready and willing to account as this honorable court shall direct for all such parts of the personal estate of the said testator as have been possessed or received by this defendant, having all just and reasonable allowances made which she is entitled to as such executrix; And in all other respects this defendant submits to act as the court shall direct, upon being indemnified and paid her costs of this suit; And denies combination, &c. [*see sect. IV. antea, p. 569.*]

W. A.

*\*X. Answer of an executor and of the husband of the plaintiff to a bill for payment of a legacy—the executor admitting assets, and the husband claiming to be entitled to receive the legacy.*

(*For the form of title, refer to sect. I. p. 563.*)

Admit that the deceased was possessed of personal estate; also her will, and the bequest of the legacy;

Her death;

And probate of her will by defendant W. M. who admits assets suffi-

These defendants W. M. and F. H., &c. [*see form No. 2, antea, p. 563,*] severally answering say they admit it to be true that M. M. deceased in the said bill named was possessed of considerable personal estate, and that she made such will of such date purport and effect as in the said bill set forth, so far as the same is therein set forth, and thereby gave to the said complainant the legacy or sum of —l. in manner in the said bill mentioned, and nominated this defendant W. M. sole executor of her said will; but for greater certainty these defendants refer, &c.; And these defendants further severally answering say they admit it to be true that the said testatrix departed this life at or about the time in the said bill in that behalf mentioned, and without altering or revoking her said will; And this defendant W. M. further answering saith he admits, and this defendant F. H. saith that he believes it to be true that this defendant W. M. did duly prove the said will in the proper Ecclesiastical Court, and did undertake the execution thereof; And this defendant W. M. admits

that under and by virtue of the said will he hath possessed himself of the said testatrix's personal estate to an amount more than sufficient to pay and discharge her funeral expenses just debts and legacies, and particularly the said legacy of —l., and that the said complainant hath applied to this defendant to be paid the said legacy or sum of —l. so given to her by the said will as in the said bill mentioned, and that this defendant W. M. did refuse to pay the same to her without the consent and \*concurrence of this other defendant her husband, and without which this defendant is advised and humbly submits he could not safely pay the said legacy; And this defendant W. M. further saith he doth admit assets of the said testatrix come to his hands sufficient to answer the purposes aforesaid, and is ready and willing and hereby submits to pay the said legacy to such person or persons and in such manner as this honorable court shall be pleased to direct; And this defendant F. H. saith he claims to be and humbly insists that he is in right of the said complainant his wife, entitled to receive and be paid the said legacy or sum of —l. so given to her by the said will as aforesaid, and humbly hopes the same will be ordered to be paid to him accordingly; And these defendants deny, &c. [see sect. IV. *antea*, p. 569.]

cient to pay the legacy;

also admits the plaintiff's applications, and his refusal

[\*590]

to pay the legacy without the consent of the other defendant.

That he is willing to pay the same as the court directs.

Claim by F. H. to receive the legacy.

E. K.

\*XI. *Answer of the executors of a deceased acting executor, to a bill of revivor; the defendants not admitting assets, not knowing what was due from their testator to the original testator, but submitting to account.*

(For the form of title, refer to sect. I. p. 564.)

These defendants, &c. [see form No. 2, *antea*, p. 565,] severally answering say they believe it to be true that at or about the time in the said bill stated R. W. in the said bill of revivor named, exhibited his original bill of complaint in this honorable court against such parties as defendants thereto as in the said bill mentioned, thereby stating and praying to the effect in the said bill of revivor set forth, so far as the same is therein set forth, and that in consequence of the death of the said R. W. the said complainant T. W. at or about the time in the said bill of revivor mentioned, exhibited his supplemental bill in this honorable court against such parties defendants thereto as therein mentioned, stating and praying to the effect in the said bill of revivor set forth, so far as the same is therein set forth; And that the said several defendants in the said supplemental bill named, afterwards appeared and put in their answers thereto, and that such proceedings have since been had in the said cause as in the said bill of revivor mentioned; but for their greater certainty nevertheless these defendants crave leave to refer to the said original and supplemental bills answers and other proceedings now remaining filed as of record in this honorable court; And these defendants further severally answering say they admit it to be true that before any further proceedings were had in the said

Admit the original bill filed,

the supplemental bill,

and the subsequent proceedings.

Admit the death of G. R. a defendant; That he had principally acted as exe-

[ \*591 ]

cutor, and that the defendants have since proved his will, and possessed his personal estate.

Believe that the same is sufficient to answer what might be due to the estate of T. W., do not admit the same, but submit to account;

And submit that the suit and proceedings may stand revived.

cause, and at or about the time in the said bill of revivor in that behalf stated, G. R. one of the defendants to the said original and supplemental bills, and one of the executors and trustees under the will of the testator T. W. in the said bill of revivor named, and who hath principally acted in the trusts thereof, departed this life having first duly made and published his last will and testament in writing of such date as in the \*said bill of revivor mentioned, and thereof appointed these defendants executors; And these defendants admit that since his death they have duly proved his said will in the proper Ecclesiastical Court, and undertaken the executorship thereof, and are thereby become his legal personal representatives, and that they possessed the said G. R.'s personal estate and effects so far as they have been conveniently able, and these defendants believe (although they do not admit the same) that such personal estate and effects are sufficient to answer whatever might be due from the said G. R. at the time of his death to the estate of the said testator T. W. if anything were so due; but these defendants not knowing the amount thereof are advised that they cannot with safety or propriety admit assets of their said testator to be in their hands sufficient to answer the same, and these defendants say they are ready to account for the said G. R.'s personal estate possessed by them or for their use, in such manner as the court shall be pleased to direct, if the same should become necessary; And these defendants further severally answering say they submit that the said suit and proceedings which became abated on the death of the said G. R. may stand and be revived against them as such executors as aforesaid, and be restored to the same plight and condition in which they were in at the time of the death of the said G. R.; Without that, &c. [see sect. IV. *antea*, p. 569.]

## XII. *Answer of an executor of a deceased executor to a bill of revivor and supplement; the defendant admitting assets.*

(For the form of title, refer to sect. I. p. 564.)

Admits the filing of the original bill,

the decree and the subsequent proceedings;

The death of A. W. a defendant;

This defendant, &c. [see form No. 1, *antea*, p. 565,] answering saith he believes it to be true that at or about the time in the said bill stated the several persons therein in that behalf named exhibited their original bill of complaint in this honorable court against such parties as defendants thereto as in the said bill are mentioned, thereby stating and praying to the effect in the said bill set forth so far as the same is therein set forth; and that such decree decretal order bill of revivor and other proceedings were had therein as in the said bill set forth; but for his greater certainty nevertheless this defendant craves leave to refer to the said original bill decree and other proceedings now remaining as of record in this honorable court; And this defendant further answering saith that A. W. in the said bill named hath lately departed this life, and that the said A. W.

duly made and published his last will and testament in writing, and thereby appointed Dame A. B., R. T. and this defendant executrix and executors thereof, and that this defendant hath since the death of the said A. W. alone duly proved his said will in the Prerogative Court of the Archbishop of C. and is thereby become his legal personal representative, but this defendant doth not know \*nor can he set forth as to his belief or otherwise who is the heir at law of the said A. W.; And this defendant further saith he doth not know nor can form any belief whether the said A. W. did or not after making of the report in the said bill mentioned, receive any sum or sums of money arising from the real and personal estate of D. G. the elder the testator in the pleadings of this cause named, which ought to have been accounted for by him; but this defendant saith he admits that he hath received assets of the said A. W. sufficient to answer any such sum or sums of money if it shall appear that any such were received and not accounted for by the said A. W. in his lifetime; And this defendant saith that he is a stranger to the several other matters and things in the said bill inquired after; But submits that the said suit and the proceedings had therein should stand and be revived against him this defendant as such personal representative as aforesaid; And this defendant denies, &c. [*see sect. IV. antea, p. 569.*]

His will;  
And that the defendant alone proved the same but  
[ \*592 ]  
cannot state who is the heir at law, nor whether A. W. after the making of the report possessed any part of the estate of D. G. but that he admits assets, if any such were possessed by A. W. and not accounted for.  
And submits that the suit may be revived.

\*XIII. *Answer of an infant heiress to a bill by simple-contract creditors against the executors and trustees under the will of her father, who had died greatly indebted, possessed of real and personal estate.*

(*For the title, see form No. 3, antea, p. 569.*)

This defendant(25) answering saith she does not know and cannot set forth as to her belief or otherwise whether Z. R. the testator in the said bill named was or not in his life-time indebted to the said complainant J. C. in the sum of 315*l.* or any other and what sum of money for moneys lent and advanced paid laid out and expended to or for the use of the said Z. R., nor whether for securing the repayment thereof with lawful interest for the same he the said Z. R. did or not make and sign such promissory note of such date and in the words and figures or to the purport or effect as in the said bill stated and set forth, or to any other purport or effect, nor whether the said Z. R. did or not on the 28th day of April 1821 or at any other time pay off and discharge the sum of 100*l.* or any other sum of money part of the said 315*l.* secured by the said promissory note together with all or what arrears of interest, nor whether the sum of 315*l.* or any other sum of money together with interest thereon from the 1st day of January last or

Does not know whether the testator was or not indebted to the plaintiff J. C.,  
nor whether he signed a promissory note,  
nor whether he paid off part of the amount secured by the promissory note, with all arrears of in-

(25) See note (c), *antea*, p. 565, and note (i), p. 569. An infant's answer cannot be excepted to for insufficiency.

terest, nor  
what amount  
is due,  
nor whether  
the testator

[ \*593 ]  
was or not in-  
debted to the  
plaintiffs J. C.  
and T. R. as  
solicitors,  
or to J. R. for  
money lent,  
nor whether  
he did or not  
sign the bills  
of exchange  
stated in the  
bill,  
nor whether  
he was or not  
indebted to  
the plaintiff J.  
L. for money  
lent,  
nor whether  
he did or not  
sign such  
other bill of  
exchange as  
stated in the  
bill, but be-  
lieves that he  
died indebted  
to various per-  
sons;  
admits his  
death;  
and his will;  
leaving S. R.  
his widow and  
this defendant  
his heiress at  
law;  
Believes that  
S. R. and the  
three other de-  
fendants proved  
the will;  
but cannot  
state whether  
they entered  
into posses-  
sion of the  
testator's es-  
tates;  
or possessed  
his personal  
estate;  
or paid his fu-  
neral and tes-  
tamentary ex-  
penses;

from any other time doth or not now remain due and owing to the said complainant J. C., nor whether the said Z. R. was or not at the time of his death indebted to the said complainant J. C. and T. R. or either of them in the sum of 55*l*. or any other sum of money for business done and transacted and moneys paid laid out and \*expended for him or for his use in their business or profession of attorneys and solicitors, nor whether the said Z. R. was or not also at the time of his death indebted to the said complainant J. R. in the sum of £35 for money lent and advanced or in any other sum of money, nor whether the said testator did or not make and sign such bills of exchange or promissory notes of such date respectively, and in the words and figures or to the purport and effect as in the said bill stated to bear date the 17th day of June 1824 and the 25th day of August 1824, or to any other purport and effect, nor whether the said testator was or not also at the time of his death indebted to the said complainant J. L. in the sum of £65 for money lent and advanced work and labor done and performed and the goods sold and delivered or in any other sum of money, nor whether the said testa- tor did or not make and sign such bill of exchange of such date and in the words and figures or to the purport and effect as in the said complainant's bill stated to bear date the 3d day of July 1824, or to any other purport and effect; but this defendant further saith she hath been informed and believes that the said testator was indebted to various persons on specialty and simple contract at the time of his death; And this defendant further answering saith she admits that the said Z. R. departed this life on the 16th day of April last, seised and possessed of or otherwise well entitled unto very consid- erable real and personal estate, and that he made and published his last will and testament in writing of such date purport and effect as in the said bill mentioned and set forth, so far as the same is therein set forth; And this defendant further saith she admits that the said testator departed this life as aforesaid leaving his wife S. R. the mother of this defendant and also a defendant in the said bill named, and this defendant his only child and heiress at law; And this de- fendant further answering saith she has been informed and believes that the said S. R. together with M. C. D., A. K. and R. D. three other defendants in the said bill named and also trustees and execu- tors named in the said will did on — duly prove the same in the Prerogative Court of the Archbishop of Canterbury, and take upon themselves the burthen of the execution thereof; And this defend- ant further saith she does not know and cannot set forth as to her belief or otherwise whether the said Z. R., M. C. D., A. K. and R. D. or any or either of them have or hath not also as such trustees and executors named therein entered into possession of the said tes- tator's freehold copyhold and leasehold estates and receipt of the rents and profits thereof, nor whether they or any or either of them have or hath not also possessed themselves himself or herself of all or any part of the said testator's personal estate moneys securities for money goods chattels and effects or any of them, nor whether they or any or either of them have or hath not thereout paid and dis- charged the said testator's funeral and testamentary expenses, but

this defendant hath been informed and believes that all the debts due and owing by the said testator at the time of his death still remain unsatisfied; And this defendant further saith she does not know and cannot set forth as to her belief or otherwise whether the said complainants have or not frequently by themselves and their agents made such \*applications and requests to the said other defendants as in the said bill in that behalf stated and set forth or any other or what applications; And this defendant further answering saith she doth not admit that the said testator's will was duly executed and attested as by law is required to pass real estates by devise, or that the said testator was of sound and disposing mind memory and understanding at the time of making and executing his last will, and humbly insists that the said complainants ought to be put to due proof thereof; And this defendant further saith that she is an infant under the age of twenty-one years, (that is to say) of the age of three years and — months or thereabouts, and humbly submits her rights and interests to the protection of this honorable court.

but believes that all his debts are unpaid; cannot state as to any applications having been made;

[ \*594 ]

does not admit the will being duly executed, or that the testator was of sound mind, (26) and puts the plaintiffs upon proof thereof.

Saith that she is an infant, of the court.

and submits her rights to the protection

#### XIV. *Answer of a widow electing to take the bequests made to her by a will, and to release all interest in the devised estates.*

(For the form of title, refer to sect. I. p. 563.)

This defendant, &c. [see form No. 1, p. 565,] answereth and saith she believes it to be true that C. B. deceased the testator in the said bill of complaint named being possessed of a large personal estate did at or about the time in the said bill of complaint mentioned duly make and publish his last will and testament in writing of such purport and effect and containing such bequest to this defendant as in the said bill of complaint in that behalf set forth, and that the said testator appointed such persons as in the said bill of complaint named executors and executrix of his said will; And this defendant further answering saith she believes it to be true that the said testator afterwards and at or about the time in the said bill of complaint mentioned duly made and published a codicil to his said will in such words and to such purport and effect as in the said bill of complaint also set forth; but for her greater certainty nevertheless as to the said will and codicil and the respective dates purports and contents thereof this defendant craves leave to refer thereto when produced; And this defendant further answering saith she admits that the said testator departed this life at or about the time in the said bill of complaint in that behalf mentioned, without having in any manner altered or revoked his said will, save by the said codicil, and without having altered or revoked his said codicil; and that the

Admits the will, and the bequest to the defendant;

also a codicil made by the testator;

his death;

(26) It would not be proper to make such admissions on the part of an infant, but even if admitted they could not be read against the infant. 2 Madd. Ch. Pr. 333.

and that the plaintiffs have proved the will and codicil;

[\*595] claims the benefits intended the defendant by the will, and others to release all interest in the devised estate.

said complainants have since duly proved the said will and codicil in the Prerogative Court of the Archbishop of Canterbury, and taken upon themselves the executorship thereof; And this defendant further saith she claims to be entitled to the benefits intended \*her by the said testator's will, and is ready upon the same being secured to her according to the directions in the said will contained to release to J. P. in the said will named all her right and interest in and to the premises in the said will mentioned, and for that purpose to execute all necessary instruments or deeds; And this defendant denies, &c. [see sect. IV. *antea*, p. 569.]

\*XV. *Form of answer by adult and infant defendants claiming as next of kin to the deceased wife of the plaintiff, who by his bill sought to set aside a secret settlement made by his late wife before her marriage.*(27)

(For the title, see form No. 9, p. 564.)

Believe that the plaintiff was for years acquainted with his wife before their marriage; that a treaty was for some time pending; and that in 1813 the marriage was solemnized.

Claim by the adults to be entitled jointly with the infants as the next of kin of the deceased's wife to the moneys settled by her. Claim by one

These defendants J. B. and M. his wife, H. H., E. H., W. H., J. P., and T. P. (*the adults*) now and at all times hereafter saving and reserving, &c. [*as in form No. 2, p. 563, as far as the words "make answer unto," and proceed thus:*] they these defendants J. B. and M. his wife, H. H., E. H., W. H., J. P. and T. P. severally answering say they believe it to be true that the said complainant was for several years previous to the year 1812 on terms of intimacy and friendship with M. P. spinster in the said bill named, afterwards, M. G. the wife of the said complainant, and that a treaty of marriage was for some space of time pending between the said complainant and the said M. P., which was at length in the said year 1812 concluded and agreed upon between them; and that on or about the 6th day of July 1813 the marriage between the said complainant and the said M. P. was duly had and solemnized, but for what space of time such treaty of marriage was pending, or when in particular the same was concluded and agreed upon, these defendants do not know and cannot set forth as to their information or belief or otherwise; And these defendants J. B. and M. his wife, H. H., E. H., W. H., J. P. and T. P. further severally answering say, &c. &c. [*Inserting the names of the adults at the beginning of the answer to each interrogatory.*] And these defendants J. B. and M. his wife, H. H., E. H., W. H., J. P., and T. P. claim to be entitled to the said principal moneys and interest jointly with the said infant defendants W. P. and J. P. as the next of kin to the said complainant's said late wife, to the total exclusion of the said complainant's rights as in the said complainant's said bill alleged; and in case this honorable court shall be of opinion that they are entitled to the said principal moneys and interest as such next of kin, this defendant M. B. humbly hopes that this honorable

(27) See the case of *Goddard v. Snow*, 1 Russ. 485.



court will order and direct her part or share of and in the same moneys and interest to be settled upon and for her separate use and benefit; \*And these defendants W. P. and J. P. severally say that they are infants under the age of twenty-one years, and that they severally claim such interest in the premises as they are respectively entitled to, and submit their several interests to the protection of this honorable court; and these defendants J. B. and M. his wife, H. H., E. H., W. H., J. P. and T. P. severally deny, &c. [see form IV. *antea*, p. 569.]

defendant to have her share settled to her separate use.

[ \*596 ]

Two of the defendants infants, and submit their interest to the protection of the court.

\*XVI. *Part of an answer of the widow and executrix of a deceased surviving executor; the plaintiff claiming either as administratrix or in her own right to be entitled to the share of a residuary legatee who was supposed to have attained twenty-one and to have died abroad intestate,—the answer stating a release executed by the plaintiff and her late husband to the defendant's late husband as surviving trustee and executor, and claiming the same benefit therefrom as if pleaded.*(28)

And this defendant saith that by a certain deed poll or instrument in writing under the hands and seals(29) of N. P. and the said complainant then the wife of the said N. P. bearing date on or about the 24th day of February 1800, the said N. P. and the said complainant did in consideration of the sum of 181*l.* to them paid by the said J. B. the receipt whereof they the said N. P. and the said complainant did thereby acknowledge and which sum was in fact so paid, remise release and for ever quit claim unto the said J. B. the late husband of his defendant his heirs executors and administrators all and all manner of action and actions, &c. and demands whatsoever both at law and in equity or otherwise howsoever which against the said J. B. as such surviving trustee and executor of the said T. S. they the said N. P. and the said complainant or either of them ever had, and which they their heirs executors or administrators should or might thereafter have claim challenge or demand for or by reason or means of any matter cause or thing whatsoever; As by such deed poll or instrument in writing to which this defendant craves leave to refer when the same shall be produced will appear.

Statement of the release.

And this defendant submits to this honorable court whether or not if the said N. B. died under the age of twenty-one years the said complainant as the only surviving grand-child of the said testator T. S. as the said complainant alleges in her said bill, became entitled in her own right to the said share of the said N. B. under or by virtue of the said testator's will; and this defendant further answering saith she admits that applications have been made to her by or on the behalf of the said complainant, and also by one W. B. who stated himself to be the brother of the said N. B. for the purposes in the said complainant's original and amended bill of complaint mentioned,

Submits whether the plaintiff is or not entitled as surviving grandchild.

Admits applications have been made;

(28) See *Ld. Red. Tr. Pl.* p. 308, 4th edit.

(29) See *Ld. Red. Tr. Pl.* p. 263.

Denies having refused to comply therewith.

[ \*597 ]

Submits whether the plaintiff is or not exclusively entitled either in her own right or as administratrix ;

Submits that she is barred by the release,

and submits to act under the direction of the Court.

and this defendant positively denies that she ever refused to comply \*with such application otherwise than as this defendant alleges, that she always distinctly stated in answer to such applications that whenever satisfactory proof of the death of the said N. B. was adduced, the executors of the said J. B. were ready to account for the said share of the said N. B. to the persons or person who should be legally entitled to the same ; and this defendant saith that she hath always been and now is perfectly willing to account for and pay over the share of the said N. B. of and in the said testator's estate to the person or persons who is or are by law entitled to receive the same ; and this defendant submits to the judgment of this honorable court, whether or not the said complainant is exclusively entitled either in her own right or as the legal personal representative of the said N. B. to the said share of the said N. B. either in the whole or in part, even though it should satisfactorily appear that the death of the said N. B. took place at the period in the said complainant's original and amended bill of complaint stated ; and this defendant submits to this honorable court that by virtue of the said general release of the 24th day of February 1800 from her and her said husband to the said J. B., she the said complainant is wholly barred from making any claims on the said J. B. or his estate, in respect of the estate of the said testator T. S., and this defendant craves leave to have the same benefit from the said release as if she had pleaded the same ; and this defendant submits to act in the premises as such executrix as aforesaid under the direction and indemnity of this honorable court, and humbly hopes to have her reasonable costs and charges allowed her in this behalf ; And this defendant denies, &c.

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\*XVII. *Statement in an answer to the statute of frauds, and claiming the same benefit therefrom as if pleaded.*(30)

And this defendant saith that by an act of parliament made in the 29th year of the reign of King Charles the Second, intituled "An act for the prevention of frauds and perjuries," it is amongst other things enacted, that from and after the 24th day of June 1677, no action should be brought whereby to charge any person upon any contract of any lands tenements and hereditaments or any interest in or concerning them, unless the agreement upon which such action should be brought or some memorandum or note in writing should be signed by the said party to be charged therewith or some other person by him lawfully authorized ; And this defendant insists upon the said statute, and claims the same benefit as if he had pleaded the same.

(30) See Ld. Red. Tr. Pl. p. 267, 309 ; Beames on Pleas, 178.

\*XVIII. *Answer of the lord of a manor who had seised certain copyhold premises for want of a tenant after the death of a former tenant.*

(For the form of title, refer to sect. I. p. 563.)

This defendant, &c. [see form No. 1, p. 563,] saith he admits it to be true that he this defendant is lord of the manor of H. in the county of N., and that I. H. in the said bill of complaint named, was in and before the month of — seised to him and to his heirs according to the custom of the said manor of and in, &c. : And that on or about — the said I. H. and M. A. H. his wife in the said bill of complaint also named, conditionally surrendered all their and either of their messuages lands tenements and hereditaments holden of and situate within the said manor, To the use of S. G. in the said bill of complaint mentioned her heirs and assigns, by way of security for the sum of — and lawful interest thereon ; And this defendant saith that at a general court baron holden for the said manor on or about the — day of —, and not — as in the said bill of complaint in that behalf alleged, S. C. in the said bill of complaint also mentioned, was under and by virtue of such bargain and sale as in the said bill of complaint in that behalf set forth, admitted to all the said copyhold premises so surrendered by the said I. H. and M. A. H., To hold to her and her heirs according to the custom of the said manor ; and at the same court an acquittance or satisfaction under the hand of the said S. C. as executrix of the said S. G. on the said surrender of the — day of — was presented and duly entered on the court-rolls of the said manor ; And this defendant further answering saith he believes that at a general court baron holden for the said manor on or about the — day of — the death of the said S. C. was presented by the homage, and that who was the next heir to the said premises was not known, and thereupon proclamation was duly made for any person or persons having right to the said premises to claim the same and be admitted thereto ; and at a general court baron holden on the — day of — a second proclamation was duly made to the same effect ; and at a general court baron holden for the said manor on the — day of — a third proclamation was made in like manner, and by reason that no person came into claim the said premises or to be admitted thereto, a precept was issued at such last general court to the bailiff of the said manor, whereby he was commanded to seise in the presence of two or more copyhold tenants of the said manor all the said premises into the hands of the lord for want of a tenant ; and at a general court baron holden for the said manor on or about the — day of — S. T. the bailiff of the said manor certified that on the — day of — then last past he the said S. T. had in the presence of I. C. and T. D. two copyhold tenants of the said manor entered upon and seised all the aforesaid premises into the hands of the lord for want of a tenant thereto ; But for his greater certainty nevertheless as to the several surrenders

Admits that he is lord of the manor, that I. H. was seised of certain premises, that I. H. and wife surrendered their estates to S. G. by way of mortgage,

that at a court baron S. C. as claiming under a bargain and sale was admitted to the same estates.

Satisfaction of the mortgage entered on the court rolls.

Believes that at another court the death of S. C. was presented, and first proclamation made for the heir to claim ;

Second proclamation ; and third proclamation ;

no person claiming a precept issued to the bailiff to seise the premises, and at another court the bailiff certified that he had seised the premises.

[ \*599 ]

Offers to hold a court, and to admit the rightful tenant on being paid the customary fine;

and other proceedings, this defendant craves leave to refer to the \*court-rolls of the said manor or to the copies thereof when produced. \*[And this defendant saith he is ready and willing to cause a court to be holden for the said manor and to admit as tenant to the said premises such person as this honorable court shall be pleased to direct, being indemnified in that behalf and paid his customary fine on such admission.] And this defendant saith that he is a stranger to all other the matters in the said bill of complaint contained; and this defendant denies, &c. [see sect. IV. *antea*, p. 569.]

*Observations.*—The seisure appears to have been absolute and not conditional, and if such a seisure be warranted by the custom of the manor, there seems no reason why the lord should not insist upon his title under it. In that case the end of the answer in the place of that part which is between crotchets\*, would run thus:

*Or thus:—*

Claims to be absolutely entitled, and submits that he ought not to be restrained from proceeding at law.

“And this defendant further answering saith that according to the custom of the said manor of H., this defendant as lord of the said manor is become absolutely entitled to the said several premises by virtue of the notices and proceedings aforesaid; And this defendant humbly submits that he ought not to be compelled to admit any tenant thereto or to be restrained from proceeding to recover the same by ejectment.”

If the custom to entitle the lord be not clear, then the answer must stand as drawn; otherwise the defendant may be made to pay costs.

### XIX. *Answer of the mortgagor to a bill of foreclosure.*

(*For the form of title, refer to sect. I. p. 563.*)

Admits the loan,

the execution of the mortgage securities,

the death of the mortgagee, but is ignorant whether he left A. W. his heir at law

This defendant, &c. [see form No. I. p. 565,] answereth and saith he admits it to be true that this defendant did at or about the time in the said bill of complaint in that behalf mentioned, borrow the sum of —l. from A. W. the elder in the said bill of complaint named, and that thereupon such indenture of bargain and sale and such bond as in the said bill of complaint are set forth, were duly made and executed by and between this defendant and the said A. W. the elder, and were of such date and of such purport and effect as in the said bill of complaint in that behalf stated; but for his great certainty nevertheless as to the said indenture and bond and the respective dates purport and effect thereof this defendant craves leave to refer thereto when produced; And this defendant further answering saith he admits it to be true that the said A. W. the elder departed this life before payment of the said principal money or any part thereof; And this defendant further saith it may be true for any thing this defendant knows to the contrary that the said A. W. the elder left A. W. the younger in the said bill of complaint also named his eldest son and heir at law him surviving, and that he had first duly made and published his last will and testament \*in writing, and thereby

[ \*600 ]

appointed the said complainant T. W. and the said A. W. the younger and L. W. since deceased executors thereof, and that the said executors duly proved the said will in the proper Ecclesiastical Court, and that the said will did not in any manner affect the said mortgaged premises, and that the legal estate and interest therein descended on and vested in the said A. W. the younger, and that such indenture as in the said bill of complaint is stated to bear date, &c. was duly made and executed by and between such parties and to such purport as in the said bill of complaint set forth; and that the said E. W. the younger departed this life at or about the time in the said bill of complaint in that behalf mentioned, leaving the said complainant G. W. an infant, his eldest son and heir at law him surviving and that he had first duly made and published his last will and testament in writing of such date as in the said bill of complaint mentioned, and thereby appointed the said complainants T. W. &c. executors thereof, and that the said complainants duly proved the said will in the proper Ecclesiastical Court, and that the said will did not in any manner affect the said premises, and that the legal estate and interest therein descended upon and is now vested in the said complainant G. W., and that the said T. W. departed this life soon after the death of the said last-mentioned testator, and that thereupon the said complainant T. W. became also the surviving executor of the said A. W. the elder, but this defendant knows nothing of the said several matters aforesaid save as he is informed by the said bill of complaint, and therefore craves leave to refer the said complainants to such proof thereof as they shall be able to make; And this defendant admits that the said principal sum of —£. or any part thereof hath not yet been paid, and that the same now remains due and owing from this defendant on the security of the said mortgaged premises together with an arrear of interest thereon from —, but this defendant denies that the said mortgaged premises are a scanty security for the same, and on the contrary thereof this defendant saith that the said mortgaged premises are the value of £—— and upwards; and this defendant saith that there is no other charge or incumbrance affecting the said mortgaged premises; and this defendant trusts this honorable court will allow him a reasonable time for the redemption of the said premises; And this defendant denies, &c. [see sect. IV. *antea*, p. 569.]

or made a will appointing the plaintiff T. W. and A. W. and L. W. executors, or whether they proved the same, or whether the legal estate descended to A. W. or as to the execution of a certain deed, or whether A. W. died leaving the plaintiff G. W. his heir at law, or whether A. W. had made a will appointing the plaintiffs T. W., &c. executors, or whether they proved the will, or whether the legal estate descended to G. W., or whether T. W., became the surviving executor of the mortgagee; admits that the mortgage-money has not been paid and is still due with interest, denies that the security is scanty, or that there is any other incumbrance.

\*XX. *Answer of the executors of the first mortgagee to a bill of foreclosure, filed by the assignee of the second mortgagee (who had obtained possession of the title deeds and claimed a priority over the first mortgagee) against the infant heir of the mortgagor, and also against a subsequent mortgagee.*

(For the form of title, refer to sect. I. p. 564.)

These defendants, &c. [see form No. 2, p. 565,] severally answering say they have been informed and believe it to be true that

Admit the execution of

the mortgage  
of the 10th  
May, 1814;  
[ \*601 ]

and that the  
deeds were  
delivered over  
to W. P. by  
the testator T.  
E.;

do not know  
whether T. E.  
sold certain  
part of the  
premises,

nor whether  
he paid part of  
the purchase-  
money to W.  
P. in reduc-  
tion of his  
mortgage, but  
believe that  
the same was  
reduced to  
£400 and that  
it was agreed  
that the same  
sum should  
remain on  
mortgage of a  
particular es-  
tate.

Admit the  
execution of a  
deed of assign-  
ment to the  
plaintiff,  
and that the  
deeds were  
delivered over  
to the plain-  
tiff by W. P.,  
but cannot  
state what is  
become of  
them;  
Admit the  
death of T. E.,  
and his will,

such indenture of demise or mortgage of such date between such \*parties and of such purport or effect as in the said complainant's original(31) and amended bill of complaint mentioned to bear date the 10th day of May 1814 so far as the same is therein set forth was duly made and executed, but these defendants for greater certainty crave leave to refer to the said indenture when the same shall be produced; And these defendants further say they believe it to be true that all the title-deeds and writings relating to the premises comprised in the said indenture of demise or mortgage were delivered over by the testator T. E. in the said complainant's original and amended bill of complaint named to W. P. therein also named at the time of the execution of such indenture of demise, but these defendants do not know the same of their or either of their own knowledge; And these defendants further say that they or either of them to the knowledge or belief of the other of them do not know have never been informed save by the said complainant's bill, and therefore cannot set forth as to their or either of their belief or otherwise whether the messuage or tenement in the said complainant's original and amended bill of complaint mentioned to be situate in, &c. was or not sold and disposed of by the said T. E., nor whether he did or not pay the sum of £600 part of the mortgage-money in the said complainant's original and amended bill mentioned to be due to the said W. P. out of the purchase-money of such messuage, nor whether it did or not reduce such mortgage-money to the sum of £400, but these defendants believe that the same mortgage-money was reduced to the sum of £400, and that it was agreed that the same sum of £400 should remain as a mortgage on the estate called Little C. in the said complainant's original and amended bill mentioned as therein is alleged; And these defendants further say they have been informed and believe it to be true that such indenture of assignment as in the complainant's bill mentioned to bear date the 17th March 1821 between such parties, and of such date purport and effect as in the said complainant's original and amended bill mentioned and set forth so far as the same is therein set forth was duly made and executed, and that the several title-deeds and writings relating to the said estate were together with the said indenture of demise or mortgage delivered over to the said complainant by the said W. P. at the time of the execution of the said indenture of assignment as in the said complainant's original and amended bill of complaint is alleged, but whether the same title-deeds and writings are not now in the custody or power of the said complainant or what is become thereof these defendants do not know and cannot set forth as to their or either of their belief or otherwise; And these defendants further severally answering say they have been informed and believe it to be true that the said testator T. E. departed this life at the time in the said complainant's original and amended bill stated having first duly made and published his last will and testament in writing of such date purport and effect as therein in that behalf mentioned and set forth so far as the same is therein set forth, but these defendants

(31) See note (b), antea, p. 563.

for greater certainty crave leave to refer to the \*said will or the probate copy thereof when the same or either of them shall be produced ; And these defendants further say they believe it to be true that the said testator left T. E. jun. another defendant to the said complainant's original and amended bill of complaint his eldest son and heir at law, and that F. B. and R. U. therein also named have renounced the devise made to them by the said testator's will, and have duly executed a deed renouncing and disclaiming the same, and that the said testator's real estates have descended upon and are now vested in the said defendant T. E. as his eldest son and heir at law as in the said complainant's original and amended bill is alleged ; And these defendants further say they have been informed and believe it to be true that the said sum of £400 was not paid to the said W. P. or to the said complainant at the time in the said complainant's original and amended bill mentioned, and that the same or some part thereof together with some arrear of interest thereon is now due and owing to the said complainant, but what principal money and interest in particular these defendants do not know and cannot set forth as to their or either of their belief or otherwise ; And these defendants admit that by the means in the said complainant's original and amended bill stated the said mortgaged premises became absolute in law in the said complainant, and these defendants submit to the judgment of this honorable court whether the said defendant T. E. ought not to pay to the said complainant what shall be found to be due and owing to him for principal-money and interest, and whether for the reasons hereinafter stated the said complainant ought to be permitted to have or enjoy the said mortgaged premises ; And these defendants further say that they or either of them to the knowledge or belief of the other of them do not know have never been informed save by the said complainant's bill, and therefore cannot set forth as to their or either of their belief or otherwise whether the said complainant hath or not made or caused such applications and requests to be made to the said defendant T. E. as therein stated or set forth or any other applications and requests, nor whether the said defendant T. E. doth or not absolutely refuse to comply therewith, nor whether the said defendant T. E. doth or not make such pretences as therein stated ; And these defendants deny that the said mortgaged premises are at all a scanty security for the principal and interest due to the said complainant ; And these defendants further severally answering say that by an indenture of demise by way of mortgage bearing date the — day of — 1813 and made between the said testator T. E. of the one part, and R. P. then of, &c. since deceased of the other part, It is witnessed that in consideration of the sum of £800 sterling money therein expressed to be paid to the said T. E. by the said R. P. and which was in fact so paid and the receipt whereof the said T. E. did thereby acknowledge, he the said T. E. did grant bargain sell and demise unto the said R. P. his executors administrators and assigns, All that, &c. To hold the same unto the said R. P. his executors administrators and assigns from the day of the date thereof for the term of 900 years from thence next ensuing and fully to be complete and ended, subject nevertheless to the pro-

[ \*602 ]

and that he left T. E. his heir at law,

that F. B. and R. U. have renounced the devise to them and disclaimed, and that the real estates have descended upon T. E.

Admit that the 400l. was not paid, and that the same or some part with interest is still due, but cannot state how much.

Admit that the premises have become absolute in law in the plaintiff.

Submit whether T. E. ought not to pay the plaintiff what is due to him.

Do not know as to any applications being made to T. E.

Deny that the premises are a scanty security.

State the execution of a mortgage by demise from T. E. to R. P. for securing 400l. ;

[ \*603 ]

That default  
was made in  
payment,

that R. P. died,  
having made a  
will and ap-  
pointed the  
defendants  
executrix and  
executor,  
and that they  
proved the  
same;  
that T. E. paid  
to them 400*l.*,  
part of the  
800*l.*, with all  
arrears of in-  
terest,  
and that the  
executrix of T.  
E. paid inter-  
est to 1820.  
Statement of  
the amount  
due for princi-  
pal and inter-  
est,

that at the  
time of the  
execution of  
his mortgage  
R. P. insisted  
upon having  
the deeds deli-  
vered up to  
him, which T.  
E. promised to  
do, but after-  
wards refused.  
Deny that any  
fraud was in-  
tended in not  
having the  
deeds deliver-  
ed up, or that  
they were left  
for the pur-  
pose of impos-  
ing on the

viso in the said indenture contained for redemption of the same \*premises and making void the said term of 900 years, on payment by the said T. E. his heirs executors administrators or assigns unto the said R. P. his executors administrators or assigns of the sum of 800*l.* with lawful interest for the same at or upon the — day of — 1814; As by the said indenture now in the possession of these defendants and to which they crave leave to refer for greater certainty as to the tenor and contents thereof when produced will appear; And these defendants further say that default was made in payment by the said T. E. of the said sum of 800*l.* and interest at the time in the said indenture mentioned for payment thereof, whereby the said estate and premises became vested absolute at law in the said R. P. for all the then residue of the said term of 900 years therein; And these defendants further say that the said R. P. departed this life on the — day of — having previously duly made and published his last will and testament in writing bearing date the — day of — 1812 and thereby appointed them these defendants executrix and executor thereof, and that on the — day of — 1818 they these defendants duly proved the same in the Consistory Court of the diocese of H. and are thereby become the legal personal representatives of the said R. P. deceased as to the term and premises; And these defendants further say that the said T. E. did on the — day of — pay to these defendants as such executrix and executor as aforesaid the sum of 400*l.* part of the said principal sum of 800*l.* so due and owing to the said R. P. deceased together with the arrears of interest thereon, and that M. F. E. the executrix of the said T. E. deceased did after the decease of the said T. E. duly pay or cause to be paid unto these defendants all arrears of interest upon the remaining sum of 400*l.* up to the — day of — 1820; And these defendants further say that there now remains due and owing to them as such executrix and executor as aforesaid upon or by virtue of the said indenture of mortgage of the — of — 1813 the principal sum of 400*l.* together with the sum of — *l.* for interest thereon at the rate of 5*l.* per cent. per annum from the said 3d day of August 1820; And these defendants further say they have been informed and believe it to be true that at the time of the execution of the said indenture of mortgage bearing date the 3d day of February 1813, the said testator R. P. insisted upon having the title-deeds and writings relating to the said estate called Little C. delivered over to him, and the said testator T. E. pretending that the same were not then in his possession promised to deliver them up in a few days, but that he neglected to fulfil such promise and refused at any time afterwards to deliver them up when requested so to do by the said R. P.; And these defendants deny that any fraud was ever intended by the said R. P. in not having such title-deeds and writings delivered up to him, or that the same were so left in the hands of the said testator T. E. for the purpose of imposing upon the said complainant, or any other person, or of permitting the said testator T. E. to obtain any further sums of money on the security of the said premises; And these defendants submit to the judgment of this honorable court whether they as the legal



personal representatives of the said testator R. P. are not for the reasons aforesaid entitled to the said estate and premises \*called Little C., and to have the said principal and interest so due to them as aforesaid paid in preference to the said complainant; Or in case this honorable court shall be of opinion that the said complainant is entitled to the said mortgaged premises and to be paid all arrears of principal and interest in preference to these defendants by reason of the title-deeds being delivered over to him by the said testator T. E., and which these defendants allege was a fraud by the said T. E. upon the said R. P., whether they ought not to be permitted to redeem the said complainant, and to have possession of the said mortgaged premises and of the title-deeds and writing relating thereto delivered up to them in case the said defendant T. E. shall make default in payment to the said complainant at the time to be appointed by this honorable court: And these defendants deny, &c. [see sect. IV. *antea*, p. 569.]

plaintiff, or permitting T. [ \*604 ] E. to obtain further sums, and submit whether the defendants are not entitled to a preference to the plaintiff, Or if not, whether they ought not to be permitted to redeem him.

XXI. *Answer to a bill for tithes by a vicar against the occupier of an ancient farm; the defendant asserting that the farm was part of a dissolved abbey which came into the hands of the Crown in the reign of Henry the 8th, and was from time immemorial held exempt from great tithes; that some of the small tithes were covered by moduses, and that agistment tithe was never paid, (32) and submitting to account for what is due in respect of other small tithes.*

(For the title, see form No. 1, *antea*, p. 563.)

This defendant, &c. [see form No. 1, *antea*, p. 565,] saith he doth not know or believe that the vicar for the time being of the vicarage and parish church of M. T. in the county of Y., hath at any time been entitled to have and receive to his own use the tithes both great and small of the several titheable matters and things from time to time arising growing increasing and renewing within the said vicarage and the titheable places thereof, except as in the said bill excepted, or other than as hereinafter is mentioned, so far as applies to the farm and lands which are occupied by this defendant.

Knows not whether the vicar is entitled to all tithes, great and small, except as appears from the answer.

Saith he believes it to be true, that the said vicarage became vacant by the death of the preceding incumbent at or about the time in the said bill mentioned; and that the *plaintiff* was shortly afterwards duly and lawfully presented instituted and inducted into the vicarage and parish church of M. T. aforesaid, and that he might soon after his induction duly qualify himself to act and officiate as vicar thereof, and that he hath ever since acted and officiated, and now acts and officiates in the cure of the said vicarage, and that he may be well entitled to have take and receive to his own use from the death of the last incumbent, all such tithes and payments in lieu of tithes, as his predecessors the former vicars of the said parish were lawfully en-

Admits that the vicarage became vacant. That the plaintiff was duly instituted and inducted, and soon after duly qualified himself, and that he is entitled to all such

(32) See *Batchellor v. Smallcombe*, 3 Madd. Rep. 12, 21.

tithes as former vicars were entitled to.

Admits that defendant occupies an ancient farm.

Saith that the same was parcel of a dissolved abbey and came into the hands of King Henry VIII.

And believes that from time immemorial the same was held by the abbey discharged of all great tithes,

and is now discharged therefrom.

Saith that from time immemorial the several moduses stated have been payable to the vicar in lieu of some of the small tithes.

Believes that he is entitled to receive all other small tithes except agistment.

\*titled to have take and receive within the said parish and the titheable places thereof.

Saith he admits it to be true that from and since the — day of — this defendant hath held and occupied and still holds and occupies within the said vicarage and the titheable places thereof, a certain ancient farm called or known by the name of C. G. farm, consisting of a farm-house and out-buildings and — acres of land or thereabouts.

Saith that the said ancient farm was at the time of the dissolution of the late dissolved abbey of F. in the county of Y. and from time to time and all times from time whereof the memory of man is not to the contrary had been parcel of the said late dissolved abbey, and with the rest of the possessions of the said late dissolved abbey, which was one of the greater abbeys, and had possessions of the value of — l. a year, was given and surrendered unto and came into the hands of his late Majesty King Henry VIII. under and by virtue of the act of parliament made and passed in the 31st year of the reign of his said late Majesty, intituled "An act for the dissolution of monasteries and abbeys." And this defendant believes that from time to time and at all time from time whereof the memory of man is not to the contrary, down to and at the time of the dissolution of the said late dissolved abbey of F. the said ancient farm was holden and occupied by the said late dissolved abbey discharged and acquitted of and from the payment of all great tithes; and that by means thereof and by force of the said late act of parliament passed in the 31st year of the reign of his said late Majesty King Henry VIII. the said ancient farm continued to be and hath ever since the passing of the said last-mentioned act of parliament been and now is discharged and acquitted from the payment of all great tithes.

Saith that from time whereof the memory of man is not to the contrary there hath been paid and payable and of right ought to be paid to the vicar for the time being of the said vicarage and parish of M. T. aforesaid by the occupier or occupiers for the time being of the said ancient farm, the several moduses hereinafter stated; (that is to say,) yearly at — the sum of — for every milch cow; and the sum of — for every gelt cow kept and fed upon the said ancient farm, in lieu of the tithe of milk; and also at — the sum of — for every foal yielded and brought forth upon the said ancient farm, in lieu of the tithe of foals; and also at — the sum of — for every hive of bees kept on the said ancient farm, in lieu of the tithe of honey and bees'-wax; and also at — the sum of — for every person in the family of such occupier or occupiers who did or ought to receive the holy communion, in lieu of Easter offerings; and on — day the sum of — for every householder on the said ancient farm, in lieu of the tithe of poultry and eggs.

Believes that the vicar for the time being is entitled to have and receive in kind all other the small tithes (except the tithes of agistment) arising growing renewing and increasing in and upon the said ancient farm.

Saith he admits it to be true that he hath since the said — day of —, grown cut and carried from off the said ancient farm, consider-

able quantities of wheat barley oats beans and other grain and hay without setting out the tithe thereof or making any satisfaction to the *plaintiff* for the same or any part thereof, inasmuch as for the reasons aforesaid no tithe was due to the *plaintiff* in respect thereof, the same being great tithes; and defendant for the same reason hath not herein set forth an account of such corn grain or hay.

Admits that he has grown wheat, &c. without setting out the tithes, the plaintiff not being entitled.

Saith that in the month of — this defendant paid to — the agent of the said *plaintiff* the sum of —*l.* in full satisfaction for all small tithes and moduses in lieu of such tithes due to the said *plaintiff* up to —: and the said — then accepted the said sum of —*l.* on the part of the said *plaintiff*, in full satisfaction of all such small tithes and moduses up to —, and gave this defendant a receipt for the same as for one year's tithes due to the said *plaintiff* at — then last.

Saith that he paid the tithe agent all small tithes and moduses, who gave a receipt for the same.

Saith that the pasture lands of his said farm consists of — acres or thereabouts of the yearly value of — per acre, as he computed the same, and that from — to — there was bred upon his said farm — calves, — pigs, and — geese, and that — fleeces of wool of the value of — or thereabouts are due to the *plaintiff* for or in respect of the tithe of wool arising on the said farm during the same period, but that no lambs were bred thereon.

States the particulars of his farm and of tithable matters not covered by moduses.

Saith that he had growing upon his said farm in that year — acres of turnips which he computed to be of the value of —*l.* or thereabouts, and that from the middle of the month of — to the middle of the month of — in the said year —, he depastured upon his said farm — two years old heifers and — two years old steers, together also with — sheep.

Saith that to the best of his recollection and belief he had not between — and —, growing renewing arising or increasing upon his said farm and lands in his occupation in the said parish of M. T. or the titheable places thereof, any titheable matters or things, except as aforesaid.

Saith that he believes that none of the vicars of the said parish ever received any tithe of agistment within the said parish, or any satisfaction for the same; and he therefore submits and humbly insists that the vicars of the said parish are not entitled to any tithe of agistment arising within upon or from his said ancient farm, or any satisfaction for the same.

Believes that none of the vicars ever received agistment tithe, and submits that the plaintiff is not entitled thereto.

Saith that he hath not since the — day of — had more than — persons in his family for whom Easter offerings were or are payable and that he paid and rendered to the Rev. — the curate and agent of the *plaintiff*, the Easter offerings which were due at Easter —, Easter —, and Easter —, as the same became due and payable, and that by the immemorial usage and custom of the said parish — only is due from each such person yearly for Easter offerings.

States in respect of whom Easter offerings were payable, and that the same were paid.

Saith that he is and at all times hath been ready and desirous to account for and pay to the *plaintiff* what is due to him for the tithes arising upon or from or due or payable in respect of his said farm.

Submits to account for what is due in respect of tithes.

*\*XXII. Answer of the East India Company to a bill by a lay improprator, claiming tithes or customary payments in lieu of tithes in respect of warehouses, &c. held or occupied by the defendants, they denying his right thereto.(33)*

Admit that plaintiff is seised of the impropriate rectory, but cannot state from what period, nor whether he is entitled to receive any tithes or customary payments.

These defendants, &c. [see form No. 2, p. 565,] say they have heard and believe that the said *plaintiff* is now seised of or entitled to the impropriate rectory of — in the said bill mentioned, but how long he hath been seised of or entitled to the said rectory, or whether or not from the year — or from any other time, defendants know not nor can any how set forth, nor do they know nor can they set forth, save as after-mentioned, whether or not *plaintiff* as such improprator or impropriate rector or otherwise, is or not now or hath not since the said year — or any other time, been entitled to have receive or enjoy for his own use any tithes rates for tithes sums or customary payments or other duties in lieu of tithes, for the houses shops warehouses cellars stables and other buildings of the citizens and inhabitants of that part of the said parish which lies within the city of L. and the liberties thereof as in the bill stated or otherwise.

Admit the act of parliament, and the decree as set forth in the bill.

Admit that such act of parliament as in the bill mentioned was made and passed in the reign of his late Majesty King Henry VIII., and that such decree as in the bill set forth was made in pursuance of the said act of parliament, though defendants for greater certainty as to particular contents of said act and of said decree, crave leave to refer thereto when produced to this honorable court.

Admit that they are occupiers and owners of various buildings for their servants.

Admit that they have ever since the year — occupied and do now occupy and are the owners of several stacks of warehouses and dwelling-houses for their warehouse-keepers and servants and waste ground, situate in or near G. L. and H. A., all which are in that part of the said parish of —, which is within said city of L., and was built by defendants.

Say that they being owners do not hold under any rent,

Say that having built and they themselves being the owners of said warehouses and dwelling-houses they do not now nor ever did hold the same or any part thereof under any yearly or other rent or for any consideration in the nature or in lieu of rent nor hath any yearly or other rent or any consideration in the nature or in lieu of rent at any time been paid for the said warehouses dwelling-houses or ground, though defendants say they do apprehend and believe that certain dwelling-houses or some edifices or buildings were formerly erected and did stand upon the site of or upon the same pieces or parcels of land or ground on which defendants' said warehouses and dwelling-houses have been since erected or built and do now stand as afore-said, and that some \*yearly or other rents or payment in the nature

believe that their buildings stand upon the site of ancient messuages, and that

[ \*608 ]

(33) This appears to be the answer which was filed in *Antrobus v. The East India Company*, reported 13 Ves. p. 9; the decree was made in the plaintiff's favor for the payment of the tithes at the rate of 2s' 9d. in the pound upon the annual value of the premises held or occupied by the defendants; and in note (54), 2d edit. the decree is stated to have been affirmed by the House of Lords.

of rents were reserved or made payable for or in respect of such dwelling-houses or other edifices and buildings or the ground on which the same stood, but they are unable to set forth as to their knowledge or otherwise what such rents or payments were or whether they were paid or not, except that they say they have always understood or believed and do now understand or believe that such houses or buildings were inhabited or occupied by persons of very low descriptions and necessitous circumstances, and therefore not likely to pay or make good any rents or payments whatever in respect thereof.

Say they do not now inhabit or occupy nor have they inhabited or occupied since the said year — or during any part of that time any messuages or dwelling-houses warehouses yards sheds wharfs quays stables or other edifices buildings and premises situate within that part of the said rectory and parish which is in the city of L. or the liberties thereof save as aforesaid.

Say they are advised and humbly insist that *plaintiff* as the lay impropiator of said parish or rectory is not entitled under or by virtue either of the act of parliament or the decree in bill mentioned or otherwise to any tithes or yearly or other payments in the nature or in lieu of tithes for or in respect of the said warehouses and dwelling-houses of defendants or any of them inasmuch as they have also been advised and do conceive that said act of parliament and the said decree were both made with a view to the clergy of L. and not to lay impropiators and there is not any custom to warrant the demand of any such tithes or payments in lieu thereof.

Admit that having been so advised they have not paid but on the contrary have refused to pay any sums or sum of money to *plaintiff* or to any person for his use since the year — for or in respect of tithes or dues for these defendants' said warehouses and dwelling-houses or any of them, save and except that certain of their said warehouses having been built previous to the year — and *plaintiff* having in the month of — in that year made a demand to be paid tithes thereon at the rate of — in the pound on the yearly sum of £ — such being as defendants believe the sum the said warehouses were rated as to the land-tax, and defendants not having sufficiently investigated the right of *plaintiff* to make such demand, defendants did then submit to make such payment to *plaintiff* and they have continued to make the same up to — last; but they do for the reasons aforesaid insist that such payment hath been made in their own wrong and through ignorance of their own rights and are therefore not bound to continue the same for the future.(34)

(34) From the report in 13 Ves. p. 18, 19, it should seem that part of this answer was omitted in the former edition of this work.

*\*XXIII. Answer to a bill by a rector and his lessee for arrears of tithes—three of the defendants had carried on the business of brewers in partnership, which was dissolved as to one, and another defendant admitted a partner; (the other defendant occupying a house and garden as their clerk;) the defendants admit the plaintiff's title, and set forth the accounts required as far as they are able, but insist upon a composition which had been paid annually in lieu of tithes as binding upon the plaintiffs.*

*A supplemental answer was afterwards filed by three of the defendants by leave of the court, to explain and correct several mistakes made in setting out the accounts; (vide postea, p. 615.)*

The joint and several answer of W. P. T., J. S., E. W., R. T. and W. H. defendants, to the bill of complaint of the Rev. F. W. B. clerk, and C. E. complainants.

Admit that F. W. B. was duly instituted and inducted, and is now the rector, and as rector entitled to all tithes great and small;

admit that a lease of the tithes was granted by F. W. B. to C. E.,

that such lease was afterwards surrendered, and a new lease granted, which is still subsisting; admit that the defendants W. P. T., J. S., and E. W. occupied a farm and lands until October, 1820, when E. W. retired, and the de-

These defendants, &c. [see form No. 2, p. 565,] severally answering say they admit it to be true that the said complainant F. W. B. was at or about the time in the said bill in that behalf mentioned duly and lawfully presented and instituted and inducted to and into the rectory and parish church of S. M. in the said bill mentioned, and that he has ever since been and is now the true and lawful rector thereof and that as such rector he became entitled to all the tithes both great and small of the several titheable matters and things growing renewing arising or increasing within the said rectory and parish and the titheable places thereof; And these defendants further severally answering say they do not know of their own knowledge, but they have heard and believe it to be true that in or about the month of May 1813 the said complainant F. W. B. did duly demise to the said complainant C. E. the several tithes arising within the said rectory or parish for the term of fourteen years from the 25th of March 1813 if the said complainant F. W. B. should so long live and continue rector of the said parish, and that in or about the month of June 1818 the said alleged lease was surrendered by the said complainant C. E. to the said complainant F. W. B., and that the said last-named complainant did thereupon duly grant another lease of the said tithes of the said complainant C. E. for the term of twenty-one years from the 25th of March 1818 if the complainant F. W. B. should so long live and continue rector of the said parish, and that such last-mentioned lease is still subsisting; And these defendants further severally answering say they admit it to be true that in and previously to the said year 1813 these defendants W. P. T., J. S. and E. W. did hold and occupy a certain farm and lands hereinafter mentioned within the said rectory and parish or the titheable places thereof in copartnership, and that they did continue from thenceforth so to occupy the said farm and lands until the month of October, 1820, and that this defendant E. W. did then retire from the said

copartnership and cease to occupy the said farm and lands, \*and that [ \*610 ]  
upon this defendant E. W.'s retiring from the said concern this de-  
fendant R. T. was admitted a partner in the said concern in the place  
of this defendant E. W., and that these defendants W. P. T., J. S.  
and R. T. did from thenceforth hold and occupy the said farm and  
lands in copartnership together, and that the said farm and lands  
were previously to and until the latter end of the year 1813, fifty-  
seven acres two roods and thirty perches, exclusive of plantations  
and buildings, but including the gardens occupied by the defendants  
as herein stated; and in the latter end of the year 1813 these defend-  
ants W. P. T., J. S. and E. W. purchased an additional piece of land  
whereby the whole of their titheable land was increased to sixty-  
seven acres and eighteen perches, but the said quantity was reduced  
within the last two years by new plantations and several large ponds;  
And these defendants W. P. T., J. S., E. W. and R. T. further sever-  
ally answering say they deny that they these defendants or any or  
either of them had during the respective times in the said com-  
plainant's bill in that behalf stated growing upon and took from off  
the said farm and lands divers or any quantities of wheat barley and  
oats and other corn and grain, and that they or any or either of them  
had in each year during the time aforesaid growing upon and have  
taken off the said farm and lands divers or any quantities of wheat  
barley and oats and other corn and grain or divers or any quantities  
of clover and other artificial grasses, but these defendants admit  
that they have had during the time aforesaid divers quantities of  
grass which they mowed and made into hay; And these defendants  
severally deny that they did in any or either of the years of such  
their respective occupations enter upon and take from off the said  
farms and lands divers or any quantities of wood and under-wood  
excepting for the purpose of repairing the fences upon the said  
farm; And these defendants severally deny that they or any or either  
of them had growing upon and did take from off their said lands in  
any or either of such years divers or any quantities of turnips and  
potatoes flax hemp cole seed mustard seed turnip seed or other kinds  
of seeds; And these defendants admit that they had respectively in  
each of such years upon their said farm and lands such milch cows  
as hereinafter stated which produced great quantities of milk, and  
such number of cows which have produced such calves as hereinafter  
stated, but these defendants deny that during the period aforesaid  
they or any or either of them have or hath had in their said farm  
and lands any sows or any mares which have produced colts or a  
colt excepting in the year 1821 when they had a mare which produced  
one colt only; And these defendants deny that they or any or either  
of them have or hath during the period aforesaid kept upon their  
said farm and lands any sheep or any ewes which have produced  
lambs, excepting that in the latter end of the year 1820 they kept  
about one hundred ewes, which last year produced about one hun-  
dred lambs only, and which ewes were duly shorn in the year 1821,  
but about sixty-two only of the said ewes were shorn in the year  
1820, and such ewes produced such quantities of wool as hereinafter  
stated; And these defendants deny that they or any or either of

defendant R. T.  
was admitted  
a partner,  
that the farm  
and lands  
were until  
1813, fifty-  
seven acres,  
two roods, and  
thirty perches  
when addi-  
tional land  
was purchas-  
ed;  
the quantity  
since reduced  
by plantations  
and ponds;  
deny having  
grown corn,  
grain, clover,  
and grasses,  
except grass  
mown and  
made into  
hay;  
deny having  
cut wood and  
under-wood  
except for re-  
pairs;  
deny having  
grown turnips,  
potatoes, or  
seeds;  
admit having  
had cows,  
but deny hav-  
ing had sows  
or mares pro-  
ducing young,  
except in 1821,  
when one colt  
was produced;  
deny having  
kept any  
sheep, except  
in 1820, when  
they had one  
hundred ewes  
which pro-  
duced one  
hundred  
lambs.

Deny having had turkies, &c.

[ \*611 ]

Say that part of the land was occupied as gardens which produced vegetables for their families, of which they kept no account;

deny having agisted barren cattle, except as after stated.

Say that they carried on the trade of brewers, and for the purposes thereof kept horses which were kept in the stable except when sick when they were turned out and depastured;

Deny having had any other titheable matters;

Admission by four defendants that three of them did up to 1820 occupy as a garden certain lands, and that E. W., but not the other defendants, took therefrom garden stuff and fruit;

Admission by three defendants that they by their traveller, the defendant W. H. have occupied since 1820 the same garden, and that W. H. had therefrom garden stuff and fruit;

Deny that

them have or hath had upon their said farm and lands during the period aforesaid any turkies ducks geese or other fowls; And these \*defendants further severally answering say that during the period aforesaid they respectively occupied part of the aforesaid lands as gardens for their own private use which produced them vegetables and fruit for their families, but believing and fully understanding that the said complainant C. E. had accepted and taken a composition for all the titheable matters and things arising growing and increasing upon their said farm and lands these defendants did not keep any account of the vegetables and fruit growing upon the same as aforesaid, and they are totally unable to set forth any account thereof; and these defendants deny that they or any or either of them did in each or either of such years agist and depasture upon the said farm and lands any barren and unprofitable horses mares geldings bullocks oxen steers sheep or other barren and unprofitable cattle excepting as hereinafter stated; And these defendants say that during the period of their occupation of the said farm and lands as herein stated, they have carried on the trade or business of brewers, and for the purposes of their said trade have kept from sixteen to eighteen horses in each year, but the whole of such horses were kept in the stable and fed on hay, excepting when any of them were sick, when these defendants caused such horses to be turned out and depastured for a few days only, but these defendants cannot otherwise than as herein stated set forth the number of their said horses so depastured, or any further particulars relative thereto; And these defendants deny that they or any or either of them have or hath had in any or either of such years growing upon and have taken from off their said farm and lands any other titheable matters and things than as hereinbefore stated; And these defendants W. P. T., J. S., E. W. and R. T. further severally answering say they admit it to be true that these defendants W. P. T., J. S. and E. W. did previously to the year 1813 convert into a garden, and did from the said month of May 1813 up to the month of October 1820 occupy as a garden certain lands within the said rectory or parish adjoining to a dwelling-house occupied by this defendant E. W. as one of the partners in the said first-mentioned copartnership, but such garden formed part of the farm and lands aforesaid, and that this defendant E. W. but neither of these other defendants did during the time aforesaid have and take from off the said last-mentioned lands divers quantities of garden stuff and fruit as hereinafter stated; And these defendants W. P. T., J. S. and R. T. further severally answering say they admit it to be true that they these defendants have from the said month of October 1820 to the present time, and do now occupy by means of the said other defendant W. H. their traveller and clerk the said house and garden, and that the said defendant W. H. hath but neither of these other defendants have from the said month of October 1820 taken upon and from off the said last-mentioned lands divers quantities of garden stuff and fruit; And these defendants severally deny that they or any or either of them have or hath during the time in the said bill mentioned converted into garden ground any land within the said rectory or parish other than such



land as herein particularly mentioned; And these defendants W. P. T., J. S., E. W. and R. T. further severally answering say \*they deny that they or any or either of them have or hath in any or either of the years from the said month of March 1813 to the present time held and occupied or do now hold and occupy divers or any lands contiguous or near to the said last-mentioned lands or elsewhere within the said rectory or parish of S. M. aforesaid, or the titheable places thereof, or any lands in any other parish; And this defendant W. H. further answering saith he admits it to be true that he this defendant as the traveller and clerk of the said other defendants W. P. T., J. S. and R. T. hath ever since the month of October 1820 held and occupied and doth now hold and occupy the herein-before-mentioned garden situate within the said rectory or parish or the titheable places thereof, and that he hath, in each year of such his occupation had growing upon and has taken from off the said lands divers quantities of garden stuff and fruit, which the defendant consumed in his family, but this defendant never kept any account thereof, and therefore cannot set forth any particulars thereof or relative thereto; And all these defendants further severally answering say they admit it to be true that the tithes of the several titheable matters and things in the said complainant's bill mentioned as aforesaid, if the same had been duly set out and rendered to the said complainant C. E. would have been of considerable value, but of what value these defendants for the reasons aforesaid cannot set forth; And these defendants further severally answering say they admit it to be true that they these defendants did not nor did any or either of them set out the whole of such tithes to the said complainant C. E., and that they have respectively converted the whole of such tithes during the period, and according to the respective occupations of the said lands by these defendants as aforesaid to their own use for the reasons hereinafter stated; And this defendant W. H. admits it to be true that he hath never made any compensation for the tithes aforesaid possessed by him or for any or either of them, by reason that he this defendant having occupied the said garden as aforesaid as the clerk of the said other defendants, he this defendant considered and believed that the said other defendants W. P. T., J. S., and R. T. had made a compensation or satisfaction for such tithes to the said C. E.; And these defendants W. P. T., J. S., E. W. and R. T. further severally answering say they admit it to be true that they do respectively allege that they have and they do severally insist that they have duly made a compensation or satisfaction to the said complainant C. E. for all and every the tithes of the several titheable matters and things arising and growing and taken by these defendants respectively from off the said farm and lands occupied by them within the said rectory and parish or the titheable places thereof, and including all the said garden, up to the 25th day of March 1821, for these defendants severally say that in the year 1813 these defendants W. P. T., J. S. and E. W. understanding and believing that the said complainant C. E. had rented the tithes of the said rectory or parish from the said complainant F. W. B., applied to the said

they have converted any other land into garden ground; [ \*612 ] or that they have occupied or do occupy any other lands; Admission by W. H. that he occupied the said garden, and took therefrom garden stuff and fruit, which were consumed in his own family, and of which no account was kept. Admit that the tithes of the several titheable matters aforesaid, if duly set out, would have been of considerable value; Admit that they did not set out the whole of such tithes and that they converted the same to their own use; W. H. saith that he, occupying the garden as clerk to the other defendants, believed that they had made compensation; the other defendants allege and insist that they have duly made compensation for all tithes up to March, 1821, and say that believing C. E.

had rented the tithes, they agreed with him to pay him 11*l.* for one year, which was paid;

[ \*613 ]

A small addition having been made to their lands, the composition was increased to 13*l.* 10*s.*, and continued to be paid to Michaelmas, 1820,

excepting for one half-year, when the tithes were paid by persons to whom the lands had been let. Payment made of one half-year's composition to Lady-day, 1821.

Tender made at Michaelmas of another half-year's amount, which C. E. refused to accept, but give no intimation that the composition was to be considered as at an end.

Deny applica-

C. E. to know what he demanded by way of compensation or satisfaction for the aforesaid tithes, when the said C. E. proposed to these defendants to take and accept the sum of 11*l.* by even half-yearly payments by way of compensation or satisfaction for their said tithes from the 25th day of March 1813 to the 25th day of March 1814, and these defendants having agreed thereto accordingly paid the said C. E. the said sum of 11*l.* by equal half-yearly payments; And these defendants W. P. T., J. S. and E. W. having afterwards made a small addition to the land in their occupation within the said parish or the titheable places thereof, the said C. E. himself proposed to and demanded of these defendants the sum of 13*l.* 10*s.* as a composition or satisfaction for all and every the tithes of the several titheable matters and things arising growing and taken by them from off the lands occupied by them within the said rectory and parish or the titheable places thereof for the year commencing from the 25th day of March 1814 to the 25th day of March 1815, and these defendants having agreed thereto accordingly paid the said C. E. the said sum of 13*l.* 10*s.* by equal half-yearly payments, and these defendants duly paid the said sum of 13*l.* 10*s.* yearly and every year to the said C. E. as a compensation and satisfaction for all and every the tithes of the several titheable matters and things arising growing and taken by them respectively from off the said lands occupied by them or any or either of them (and including all the said gardens) within the said rectory and parish or the titheable places thereof, from the said 25th day of March 1814 to Michaelmas 1820, excepting that on Lady-day 1815 these defendants only paid the sum of 3*l.* 15*s.* for the half year's tithe due and payable on that day in consequence of these defendants having in that half year let off considerable part of the lands previously and subsequently occupied by them as aforesaid to divers other persons who paid the tithe thereof the proportion of which was settled and arranged by the said complainant C. E.; And these defendants W. P. T., J. S. and R. T. further severally answering say that having commenced partnership in the month of October 1820 as aforesaid, they these defendants duly paid to the said C. E. the sum of 5*l.* 15*s.* as a compensation and satisfaction for their tithes as aforesaid for the half year commencing Michaelmas 1820 to Lady-day 1821, including the tithes arising from the said garden occupied by the said other defendant W. H. as their clerk as aforesaid and on Michaelmas-day 1821 these defendants by their solicitor tendered the sum of 6*l.* 15*s.* to the said C. E. for their previous half year's tithe commencing at Lady-day 1821 up to Michaelmas-day 1821, when the said C. E. refused to receive the same, but did not at that time or previously or subsequently thereto give these defendants or any or either of them any notice whatever of his intention, or that they were to consider the said annual payment by way of compensation or satisfaction for the tithes as at an end; And all these defendants further severally answering say they deny that the said complainants or either of them have or hath frequently or at any times or time made such or the like applications and requests to these defendants or to any or either of them as in the said complainant's bill in that behalf stated in

respect of the matters therein stated, although these defendants severally admit that the said complainant C. E. hath written several letters to these defendants demanding a large sum of money for pretended arrears \*of tithes, but which these defendants refused to pay, considering the aforesaid composition paid to the said C. E. to be in lieu of all tithes payable by them in respect of the lands occupied by them respectively within the said rectory and parish or the titheable place thereof, and that thereupon they were not bound to render to him any account or any further payments as demanded by him in and by such letters; And these defendants further severally answering say they admit it to be true that they have never entered into any agreement or composition with the said complainants or either of them in respect of the tithes or any of them arising from the said lands situate within the said rectory or parish of S. M. aforesaid or any of them from the 25th of March 1823, or otherwise than as aforesaid, but which payments or composition for tithes these defendants severally submit and insist are binding upon the said complainants respectively, and that the said complainants or either of them are or is not entitled to any further payment or account in respect of the tithes aforesaid during the period aforesaid from these defendants or any or either of them; And these defendants further severally answering say they admit it to be true that the lands in the said complainant's bill in that behalf mentioned are respectively situate within the said parish of S. M. and not in any other parish, and that they these defendants are as hereinbefore stated the owners and occupiers of such lands: And these defendants W. P. T., J. S., E. W. and R. T. severally answering say that they have in the schedule to this their answer annexed, and which they pray may be taken as part thereof, set forth according to the best of their judgment and belief a full true and particular account of all and singular the quantities of hay which they have respectively had taken and received on or from off their said respective lands in each of the years aforesaid, or in any and which of them, and of the value thereof in each of such years, and also a like account of the number of milch cows which they respectively kept on their said lands or any part thereof in each of such years, and of the quantities of milk produced by such cows in each of such years, and also a like account of the number of cows which they respectively had on their said lands or any part thereof in each of such years, and of the numbers of calves produced thereby in each of such years, and also a like account of the numbers of sheep shorn by them or any or either of them on their said lands in each of such years, and of the quantities of wool produced thereby; And these defendants severally deny for the reasons aforesaid that they or any or either of them have or hath during the period in the said complainant's bill and hereinbefore mentioned, withheld or subtracted from the said complainants any of the tithes of the several titheable matters aforesaid, and submit and insist that they are not liable to account to the said complainants or either of them for any of such tithes, or to pay to them or either of them any sum or sums of money in respect thereof; And these defendants severally deny, &c. [see sect. IV. *antea*, p. 569.]

tions being made as stated in the bill, although they admit that C. E. wrote several letters claiming large arrears of tithes.

[ \*614 ]

Admit that they have not entered into any composition with the plaintiffs for the tithes from the 25th March, 1823, than as before stated, but insist that the payments made are binding on the plaintiffs;

Admit that certain lands are situate in the parish of S. M., and that the defendants are owners and occupiers thereof.

Reference to a schedule for an account of certain titheable matters;

Deny that they have withheld or subtracted any tithes of the matters aforesaid, and insist that they are not liable to account.

**\*\*XXIV.** *Supplemental answer filed by leave of the court to explain and correct mistakes made by three defendants in a former answer put in by them jointly with other defendants to a bill by a rector and his lessee for arrears of tithes; (vide antea, p. 609.)*

(For the title, see form No. 10, p. 564.)

Say that by mistake they denied having held any lands contiguous to the lands mentioned in the bill, and say that in 1821 they occupied certain lands for the purpose of feeding sheep.

W. P. T. saith, and the other defendants believe that he from March 1819, held certain lands the property of his son, and at the time of filing the bill certain other lands of his own;

Saith that the title deeds are not in his own or in the other defendants' possession.

Say that previously to

[ \*616 ]

These defendants now and at all times hereafter saving and reserving to themselves and each of them all and all manner of benefit or advantage of exception which can or may be had or taken to the many errors uncertainties and other imperfections in the said complainant's bill of complaint contained for supplemental answer thereto, or unto so much and such parts thereof as these defendants are advised is or are material or necessary for them or either of them to make any answer unto, these defendants severally answering say that by mistake in their said former answer they these defendants respectively stated that they denied that they or any or either of them had in any or either of the years from the month of March 1813 to the then present time held and occupied or did then hold and occupy divers or any lands contiguous or near to the last-mentioned lands in the said complainant's bill mentioned, or elsewhere within the rectory or parish of S. M. in the said bill mentioned or the titheable places thereof, or any lands in any other parish, for these defendants severally say that in the month of June 1821 they as copartners as in the said bill mentioned entered into the occupation of certain lands in the said parish of S. M. called T. and containing about twenty-six acres, for a temporary occupation only, and for the purpose of feeding certain sheep then in their possession; And this defendant W. P. T. further answering saith, and these other defendants believe it to be true, that this defendant W. P. T. hath in each and every of the years from the month of March 1819 to the present time held and occupied and now holds and occupies individually certain lands and freehold property of his son the said R. T. within the said parish, and called B. containing about twelve acres, and that he the said defendant was also at the time of the filing of the said complainant's bill and had been for several years previously thereto in the occupation of fourteen or fifteen acres or thereabouts of land of his own freehold property in the parish of A., which parish adjoins the said parish of S. M. and which last-mentioned pieces of land are described in the title-deeds relating thereto as follows, (that is to say:) All that close, &c. &c. all which said closes and lands lie adjoining together, and are situate lying and being in the parish of A. aforesaid; And this defendant W. P. T. saith that such title-deeds are not now in his custody or power although the same lately were, nor are the same or any or either of them in the custody or power of the said other defendants or of any or either of them; And these defendants further severally answering say they have been informed and believe it to be true that one A. A. was the occupier of the said lands called T. for about \*ten years previously to Lady-day 1821, when he quitted the same

and that he during his said occupation paid a composition of 2*l.* 18*s.* a year by half-yearly payments of 1*l.* 9*s.* to the said complainant C. E., in lieu and in satisfaction of all tithes arising from the said lands called T. and that he duly paid the same up to Lady-day 1821 when he quitted the occupation of the said lands; and the said defendants say that they entered upon the occupation of the said last-mentioned lands in the month of June 1821 as aforesaid, and remained in the occupation thereof until Lady-day 1822 when they quitted the same, and J. D. the owner thereof entered into the possession and occupation of the said last-mentioned lands, and as these defendants have been informed and believe it to be true has duly paid a half-yearly composition of 1*l.* 12*s.* 9*d.* in respect of the said lands, and as a composition or satisfaction for the tithes thereof from Lady-day 1822 aforesaid; and these defendants severally admit that they have never paid any composition or satisfaction to the said complainants or either of them for the tithes arising from the said lands called T. during their occupation thereof as aforesaid, but severally say that the said complainants have not nor hath either of them made any demand upon these defendants or any or either of them in respect of the tithes of the said lands called T. or for any sum or sums of money as and by way of a composition or satisfaction for the same; And these defendants severally answering say they admit to be true that they have never entered into any agreement or composition with the said complainants or either of them in respect of the tithes or any of them arising from their said lands called T. aforesaid or for any or either of them; And these defendants further severally answering say they deny that these defendants or any or either of them had during the time of such their occupation of the said lands called T. growing upon and took from off the said lands divers or any quantities [*deny having grown any wheat corn hay seeds, &c. &c.*]; And this defendant W. P. T. further answering saith he hath purchased the said lands called B. in the year 1818 for his son the said R. T. and hath ever since been in the occupation thereof, and saith that on the tithe receipt day at or about Michaelmas 1819 to the best of his knowledge remembrance and belief, he this defendant attended at the office of the said complainant C. E. for the purpose of ascertaining what sum of money was payable by him to the said C. E. as and by way of composition or satisfaction for his tithes growing renewing and increasing upon his said lands called B. and that this defendant was thereupon told that the amount of the composition of this defendant in respect of such tithes was the sum of 1*l.* 12*s.* 6*d.* payable by half-yearly payments, and that this defendant thereupon paid to the said complainant C. E. the sum of 16*s.* 3*d.* being the first half-yearly payment or composition for this defendant's tithes of the said last-mentioned lands; And this defendant saith that he duly and regularly by himself or some friend of his paid the said sum of 16*s.* 3*d.* to the said C. E. as the half-yearly payment or composition of this defendant in respect of such last-mentioned tithes, yearly and every year from Lady-day 1819 until Lady-day 1821; And this defendant W. P. T. further answering saith he admits it \*to be true that he doth allege and insist that he hath in manner

1821, A. A. occupied the lands called T., and that he paid a composition in lieu of tithes; Say that they occupied the same until 1822, and afterwards J. D. who has continued to pay the composition;

Admit that they paid no composition for the tithes thereof, the plaintiff not having made any demand;

Admit that they never entered into an agreement for the same.

Deny having grown wheat, &c.

W. P. T. saith, that he purchased the lands called B. and occupies the same, and in 1819 applied to know the amount of composition when he was told 1*l.* 12*s.* 6*d.*; that he then paid one half-year's amount, and continued to pay some until Lady-day, 1821;

Admits that  
[ \*617 ]

he alleges, and insists that he has made a composition for the tithes of the lands called B.;

Saith that he instructed his solicitor at Michaelmas 1821, to make a tender to the plaintiff C. E., believes that he did so, and saith that no notice has been given to determine the composition; Denies applications being made as stated in the bill;

and admits that he never entered into any agreement with the plaintiffs in respect of the tithes than as aforesaid, but insists upon the payments made as binding;

Denies having grown on the lands called B. wheat, &c., but admits having grown clover and grass made into hay.

aforesaid duly made a composition or satisfaction to the said complainant C. E. for all and every the tithes of the several titheable matters and things arising growing and taken by this defendant W. P. T. from off the said lands called B. occupied by him during the period aforesaid; And this defendant W. P. T. further answering saith that he this defendant instructed his solicitor the late Mr. J. D. on or about Michaelmas 1821, to tender the sum of 16s. 3d. to the said C. E. for his previous half-yearly tithes of the said lands called B., commencing from Lady-day 1821 up to Michaelmas-day 1821, and this defendant believes that the said Mr. J. D. did accordingly tender the same to the said C. E.; and this defendant saith that the said C. E. hath not at any time either previously or subsequently thereto given this defendant any notice whatever of his intention, or that he this defendant was to consider the said annual payment by way of composition or satisfaction for his tithes aforesaid as at an end; And this defendant W. P. T. further answering saith he denies that the said complainants or either of them have or hath frequently or at any times or time made such or the like applications and requests to this defendant as in the said complainants' bill in that behalf stated in respect of the matters therein stated, otherwise than as in this defendant's former answer stated; And this defendant W. P. T. further answering saith he admits it to be true that he never entered into any agreement or composition with the said complainants or either of them in respect of the tithes or any of them arising from his said land called B. situate within the said rectory or parish of S. M. aforesaid or any of them from Lady-day 1819 otherwise than as aforesaid, but which payments or composition for tithes this defendant submits and insists are binding upon the said complainants respectively, and that the said complainants or either of them are or is not entitled to any further payments or account in respect of the tithes aforesaid during the period aforesaid from this defendant; And this defendant W. P. T. further answering saith he denies that he hath had during the respective times in the said complainant's bill in that behalf stated, growing upon and took from off the said lands called B. divers or any quantities of wheat barley and other corn and grain excepting oats as hereinafter stated, or had in each year during the time aforesaid, growing upon and had taken from off the said lands divers or any quantities of wheat and other corn and grain excepting oats, but this defendant admits he hath had such quantities of clover as hereinafter stated but no other artificial grasses, and that he hath had during the time aforesaid divers quantities of grass which he mowed and made into hay, and divers quantities of potatoes turnips and parsnips; And this defendant, &c. &c.; And these defendants severally deny, &c. [*see sect. IV. antea, p. 569.*]

\*XXV. *Further answer after exceptions taken and allowed to the defendant's former answer to a bill for an account, and to restrain the infringement of a copyright.*

(For the form of title, refer to p. 564.)

This defendant saving and reserving to himself, as in and by his former answer to the said complainant's said bill of complaint was saved and reserved, for further answer thereto, or unto so much thereof as this defendant is advised is material or necessary for him to make answer unto, answereth and saith he admits it to be true that this defendant hath by the defendants T. N. L. and R. O. and by other booksellers employed by him, published and sold many copies of the ——— edition of ——— published by this defendant as in his former answer mentioned; and that the number of such copies sold by him amounts in the whole to ——— or thereabouts as nearly as this defendant can set forth the same to his knowledge or belief; but this defendant denies that he is now proceeding or threatens to proceed in publishing and selling the said book, having discontinued the sale thereof, as in this defendant's former answer mentioned; And this defendant further answering saith that the profit which he hath made by such publication doth not exceed the sum of £—— to the best of this defendant's knowledge and belief, and this defendant admits that he hath applied the produce and profits of the said publication to his own use; And this defendant saith that he printed and published ——— copies of the said book or work and no more, and that he hath sold ——— copies, and that there now remain ——— copies in his own custody or power or in the custody or power of other persons by his order or for his use as nearly as he can set forth the said several particulars as to his knowledge information or belief; and this defendant hath in a schedule to this his further answer annexed or under-written and which he prays may be taken as part thereof, set forth to the best of his knowledge remembrance information and belief, a just and true account of all the sums of money which have arisen by the publication and sale of the said book and the profits which have arisen therefrom.

Admits that he has by himself and others sold many copies of the work; and stating the number of such copies; Denies that he is continuing the publication; Stating the amount of profit, and admitting that he has applied the same to his own use; stating the number of copies printed, and the number sold and remaining unsold, and referring to a schedule for an account of the moneys produced by publication, and the profits arisen therefrom.

J. L.

XXVI. *Answer of a trustee submitting to act as the court shall direct.*

This defendant, &c. [see form No. 1, p. 565.] admits it to be true that such indentures of lease and release as in the said bill of complaint are stated to bear date ———, were duly made and executed by and between such parties and to such purport or effect as are therein set forth so far as the same are therein set forth; but for \*his greater certainty nevertheless this defendant craves leave to

Admits the execution of the marriage settlement,

[\*619]

the solemnization of the marriage,

the birth of the children, that he declines to act and is desirous of being discharged, offering to convey on being indemnified and paid his costs.

refer to the said indentures when produced; And this defendant further answering saith he admits it to be true that the intended marriage between the said complainants J. P. and E. P. was soon afterwards had and solemnized, and that the said other complainants (*the children*) are the only children of the said marriage; And this defendant admits that he doth decline to act in the trusts of the said settlement, and that he is desirous of being discharged therefrom, and that he is ready to convey and release the said trust premises to the said complainant S. M. M. and such new trustee as may be appointed by this honorable court on being indemnified in that behalf and paid all his costs and expenses.

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XXVII. *Conclusion of an answer insisting that plaintiff's remedy is at law and not in equity, and claiming the same benefit as if the defendant had demurred to the bill.*

And this defendant submits to this honorable court that all and every the matters in the said complainant's bill mentioned and complained of, are matters which may be tried and determined at law, and with respect to which the said complainant is not entitled to any relief from a court of equity, and this defendant hopes he shall have the same benefit of this defence as if he had demurred to the said complainant's bill; And this defendant denies, &c.

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ANSWERS AND DISCLAIMERS.(35)

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\*XXVIII. *Answer and disclaimer by the personal representatives of a mortgagee, relinquishing the security of the premises comprised in the plaintiff's mortgage.*

In Chancery.

The joint and several answer and disclaimer of J. F. and R. C. two of the defendants to the original and amended bill of complaint of W. S., J. C., and T. P., complainants.

Admit the death of the testator, his will appointing the

[\*620]

These defendants, &c. [*see form No. 2, p. 565,*] say they admit that J. C. in the said bill named departed this life on the — day of —, having first duly made his last will and testament whereby he appointed his sons these defendants joint executors thereof, and that they these defendants proved the same in the Prerogative \*Court of the Archbishop of York on the — day of —, and



thereby became his legal personal representatives; And these defendants further severally answering say they do not claim any interest in the estates in the said bill stated to be charged with the annuities to the said complainants W. S. and J. C. therein mentioned and with the mortgage therein also mentioned to be assigned to them; And these defendants further severally answering say they do not object to the payment of what may be due to the said complainants out of the rents and profits of the said estates; And these defendants do disclaim all right title and interest in and to the said estates and every part thereof; and these defendants deny, &c. [see *sect. IV. antea, p. 569.*]

defendants executors, and that they proved his will, Say they do not claim any interest in the premises, nor object to the payment of what is due to the plaintiffs, and disclaim all right and interest in the estates.

*XXIX. Answer and disclaimer denying having ever claimed any right or interest in the premises, in the bill mentioned.*

Answer and disclaimer of A. B. the defendant to the bill of complaint of C. D. complainant.

This defendant, &c. [see *form No. 1, p. 565,*] saith that he doth not know that he this defendant to his knowledge or belief ever had nor did he claim or pretend to have, nor doth he now claim any right title or interest of in or to the estates and premises situate, &c. in the said complainant's bill set forth or any part thereof, and this defendant doth disclaim all right title and interest to the said estates and premises and every part thereof; And this defendant denies, &c. [see *sect. IV. antea, p. 569.*]

Denies that he ever claimed and now disclaims all right and interest in the premises.

*XXX. Answer and disclaimer of a trustee under a will, denying having ever interfered in the trusts or received the rents of the trust-estates.*

The several answer and disclaimer of A. B. one of the defendants to the bill of complaint of L. M. complainant.

This defendant, &c. [see *form No. 1, p. 565,*] answereth and saith that he believes that C. D. did die seised of such estates in — as in the said complainant's said bill are mentioned; And this defendant does believe that the said C. D. did make such last will and testament in writing and did thereby create such trusts out of the said — estates and appointed this defendant trustee thereof in such manner and to such purport and effect as in the said complainant's said bill for that purpose set forth; And this defendant does believe that the said testator made E. F. gent. executor of his said will; and \*this defendant does believe that the said C. D. soon after making

Believes that the testator died seised of certain estates, that he made a will appointing defendant trustee, and E. F. executor,

[ \*621 ]

that he died soon after, seised of the estates.

Saith that he refused to intermeddle in the trusts, denies having ever entered into possession; believes that the rents were received by G. H. who was the testator's receiver; and that he has continued to receive the same; denies that he has any authority from the defendant, who is desirous of being discharged.

Denies that he ever claimed, and doth disclaim any right or interest in the premises.

his said will departed this life, (that is to say:) on or about the — day of —, without revoking or altering his said will, seised of such estates in — as in the said complainant's said bill are set forth; And this defendant further saith that he was advised that the said trust would be attended with some difficulty besides expense and loss of time to this defendant; therefore this defendant absolutely refused to intermeddle therewith or in any way concern himself therein; And this defendant denies that he or any person or persons for him ever entered on the said trust estate, or ever received any of the rents and profits thereof; but this defendant has been informed and believes that the same were received by G. H. of, &c. gent. who was employed by the said testator C. D. in his life-time to receive the rents and profits of the said — estate for him the said C. D.; And this defendant believes that the said G. H. hath received the said rents and profits of the said trust estate ever since the death of the said testator C. D. and doth still continue to receive the same; And this defendant positively denies that the said G. H. had any power or authority or direction from this defendant to receive all or any part of the rents and profits of the said trust estate, or that he ever accounted to this defendant for the same; and this defendant is very desirous and ready to be discharged from his said trust and to do any act for that purpose as this honorable court shall direct, this defendant being indemnified in so doing and having his costs; And this defendant further saith that as to so much of the said bill as seeks a discovery of this defendant's title to the lands in —, this defendant saith that he doth not know that he this defendant to his knowledge or belief ever had nor did he claim or pretend to have nor doth he now claim or pretend to have any right title or interest of in or to the said estate in — in the said complainant's bill set forth or any part thereof; and this defendant doth disclaim all right title and interest in and to the said estate in — in the complainant's said bill mentioned and every part thereof; And this defendant denies, &c. [see *sect. IV. antea, p. 569.*]

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## \*CHAPTER X.

### DEMURRERS.<sup>a</sup>

Whenever any ground of defence is apparent on the bill itself, either from matter contained in it, or from a defect in its frame, or in the

<sup>a</sup> A bill may be demurred to for any objection apparent on its face; but when not apparent on the bill, the proper mode is by plea or answer. *Harris v. Thomas*, 1 Hen. & M. 18; *Sperry v. Miller*, 2 Barb. Ch. R. 632. The demurrer must express the grounds upon which it is founded; *Nash v. Smith*, 6 Conn. 421; and it must be founded upon some point of law which goes to the absolute denial of the relief sought; *Verplank v. Caines*, 1 Johns. C. R. 57; but a demurrer assigning for cause matters of fact not appearing in and differing from the allegations of the bill, is bad. *Tallmadge v. Lovett*, 3 Edw. Ch. 563. So a demurrer assigning for cause new matter

case made by it, the proper mode of defence is by demurrer. The causes upon demurrer are merely upon matter *in* the bill, or upon the omission of matter which ought to be therein or attendant thereon, and not upon any foreign matter alleged by the defendant. (1)

(1) Ld. Red. Tr. Pl. p. 107, 8, 4th edit.; 2 Madd. Ch. Pr. 282.

which forms part of the subject of defence, is bad. *Saxon v. Barksdale*, 4 Dessau. 522. If the defendant, after a general order for further time to answer, put in a demurrer without special leave of court, it will be taken off the files for irregularity. *Burrall v. Raineleaux*, 2 Paige, C. R. 331; *Davenport v. Sniffen*, 1 Barb. 223; *Lakens v. Fielden*, 11 Paige, 644; *Bedell v. Bedell*, 2 Barb. Ch. R. 99.

A demurrer for want of parties, must point out the necessary parties either by name or in some other manner, as to enable the plaintiff to amend by joining the proper parties. *Dias v. Bouchaud*, 10 Paige, C. R. 445; see also, *Moore v. Armstrong*, 9 Porter, 697; *Walford v. Phelps*, 2 J. J. Marsh. 31; *Smith v. Kornegay*, 1 Jones, Eq. (N. C.) 40.

Where a bill is good in part, though bad as to the residue, a general demurrer to the whole bill will be bad; *Le Roy v. Veeder*, 1 Johns. C. 417; *Laight v. Morgan*, Ib. 429; and a demurrer bad in part is bad *in toto*; *Verplank v. Caines*, 1 Johns. C. R. 57; *Le Fort v. Delafield*, 3 Edw. Ch. 32; *Thompson v. Newbin*, 3 Ired. Ch. 338; *Russell v. Lanier*, 4 Hey. 289; see also, *Kimberly v. Sells*, 3 Johns. C. R. 467; *Barnawell v. Threadgill*, 5 Ired. Eq. 86; see *Burns v. Hobbs*, 29 Maine, (16 Shep.) 273; and if a bill for discovery and relief be good as to the discovery, a general demurrer to the whole bill is bad; *Livingston v. Livingston*, 4 Johns. C. R. 294; *Higinbotham v. Burnet*, 5 Id. 184; *Parsons v. Brown*, 7 Paige, C. R. 351; but where the discovery is merely incidental to the relief, a demurrer good to the relief, is good to the discovery also. *Sanza v. Belcher*, 3 Edw. Ch. 117; see also, *Le Roy v. Servis*, 1 C. C. E. 3.

When a bill in equity seeks relief, which the court has no power to grant, and also seeks a discovery, the defendant may demur to the whole bill, if it do not aver that a suit at law is pending, or is about to be brought, in which a discovery may be material; *Mitchell v. Green*, 10 Met. 101; but where a complainant is entitled to an answer to some part of his bill for a discovery and relief, a general demurrer to the whole bill will be overruled. *McLaren v. Steapp*, 1 Kelly, 376; see also, *Beach v. Beach*, 11 Paige, 161; *Stuyvesant v. Mayor, &c., of New York*, Ib. 414.

A defendant cannot, by demurrer to a bill, rely on the Statute of Frauds, unless it clearly appear on the face of the bill that the agreement is within the statute. If he claims the benefit of the statute, he must insist upon it in his answer, or set it up by way of plea. *Surtser v. Skiles*, 3 Gilman, 529; *Caldwell v. Montgomery*, 8 Geo. 106. A party who claims to be a purchaser without notice, should set up his defence by answer or plea, and not by demurrer to a bill filed against the sale. *Scudder v. Van Amburgh*, 4 Edw. Ch. 29. And where a person is wrongly made a party to a bill in equity, one not affected thereby cannot demur on that ground. *Crosby v. Berger*, 4 Edw. Ch. 210. Where complainant relies on an acknowledgment and registration of a deed, a failure to exhibit a certified copy thereof, is a good ground of demurrer. *Brodie v. Skelton*, 6 Eng. 120. A reservation by a defendant, in his answer to the sufficiency of a bill for want of equity, has the effect of a demurrer. *Lovett v. Longmore*, 14 Ark. (1 Barb.) 339. Where the statute prescribes the specific relief that shall be granted, and the complainant prays for specific relief of a different kind, and does not pray for general relief, a demurrer will not be sustained. *Hipp v. Huchett*, 4 Texas, 20.

Where a demurrer to a bill is overruled, the defendant should have reasonable time to answer, if requested; *Lefavour v. Justice*, 5 Blackf. 366; the order should be, that the defendant answer the bill, and if he neglect to do so, the bill may be taken as confessed. *Miller v. Davidson*, 3 Gilman, 518; *Cole County v. Angney*, 12 Mis. 132. Nor is a bill in chancery necessarily put out of court because a demurrer to it is sustained; *Fleece v. Russell*, 13 Ill. 31; but if the defendant, after demurrer, enter into an agreement of the facts of the case, and formally submits that the court shall render judgment upon those facts, it is a waiver of his demurrer. *Roach v. Gardner*, 9 Gratt. (Va.) 89. On a demurrer to a bill, a defendant is not confined to the causes of demurrer assigned in it, but may insist *ore tenus* on others. *Vanhorn v. Duckworth*, 7 Ired. Eq. 261; see also, *Caldwell v. Blackwood*, 1 Jones, Eq. (N. C.) 274. If any part of the matter covered by a demurrer is also covered by a plea or answer, the whole demurrer is overruled by such plea or answer; *Jarvis v. Palmer*, 11 Paige, 650; but a demurrer in part to a bill, followed by an answer as to the rest, is not thus overruled. See *Pierpont v. Fowle*, 2 W. & M. 23.

A demurrer is always in bar and goes to the merits of the case;(2) whatever the bill represents as *fact* must be generally taken to be true by the demurrer; but not what the bill states as inference from matter of law.(3)

A defendant cannot demur and plead or demur and answer to the same matter, for the answer will overrule the demurrer; and a demurrer to relief is overruled by an answer to the facts, or parts of the bill, in respect of which relief is prayed.(4) A demurrer if good to the relief prayed by a bill is good also to the discovery sought for the purpose of the relief;(5) the defendant however may waive the benefit of the rule as against himself, and may demur to the relief and yet answer as to the discovery;(6) but he cannot answer the discovery in part, and demur to part, nor can he demur to discovery only and not to the relief prayed, because the plaintiff may be entitled to relief without being entitled to it through the discovery, and may then obtain a decree, though he has not established his right by the defendant's answer.(7) Where the demurrer extends to relief to which the plaintiff is entitled it will be bad, though there is some relief prayed to which the plaintiff is not entitled.(8) A demurrer (unlike a plea) cannot be good in part and bad in part;(9) if however several defendants join in a demurrer, it may be good as to some of them and bad as to the others.(10)

[ \*623 ]

A defendant may put in separate demurrers to separate and distinct parts of a bill, for separate and distinct causes; for the same grounds of demurrer frequently will not apply to different parts of a bill, though the whole may be liable to demurrer; and in such case one demurrer may be overruled upon argument, and another allowed.

A demurrer must express the several causes of demurrer; and in case the demurrer does not go to the whole bill, it must clearly express the particular parts of the bill demurred to.(11) It is not a proper way of demurring to say that the defendant answers to such and such facts, and demurs to all the rest of the bill; the defendant ought to demur specifying precisely what it is that he refuses to answer,(12) and this must *not* be done *by way of exception*, as by demurring to all except certain parts of the bill.(13)

A demurrer *ore tenus* must be to that which the defendant has demurred to on the record. If the cause of the demurrer on the record is not good, he may at the bar assign other cause, but he cannot de-

(2) 1 Atk. 543.

(3) 3 Mer. 503.

(4) 2 Madd. Ch. Pr. 282, 3; *Jones v. Earl of Strafford*, 3 P. Wms. 80.

(5) 1 Madd. Ch. Pr. 216.

(6) *Abraham v. Dodgson*, 2 Atk. 156, 7; and note (p), p. 185, Ld. Red. Tr. Pl.

(7) *Morgan v. Harris*, 2 Bro. Ch. Ca. 124; *Attorney-General v. Brown*, 1 Swanst. 294; *Waring v. Mackreth*, Forr. 129, 136; 2 Madd. Ch. Pr. 286.

(8) *Todd v. Gee*, 17 Ves. 279, 2d edit.

(9) *Baker v. Pritchard*, 2 Atk. 388; 2 Madd. Ch. Pr. 286.

(10) 8 Ves. 403.

(11) Ld. Red. Tr. Pl. 213, 4, 4th edit.; and see note (h), *ibid*.

(12) 2 Madd. Ch. Pr. 283.

(13) *Robinson v. Thompson*, 2 Ves. & B. 118; *Weatherhead v. Blackburn*, *ib.* 121; but it seems that a demurrer to the whole bill, with an exception of a very small part may be good in point of form; *Hicks v. Raincock*, 1 Cox's Ca. 41.

*mur ore tenus* upon a ground which he has not made the subject of demurrer on the record.(14)

A *speaking demurrer* is bad; as where by way of *argument or inference* the demurrer suggests a *material fact* which is not to be found in the bill.(15)

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\*I. A *general demurrer for want of equity* (where there is only one defendant.)

In Chancery.

The demurrer of F. C. E., defendant, in the bill called F. E., to the bill of complaint of A. B. complainant.

This defendant by protestation not confessing or acknowledging all or any of the matters and things in the said bill of complaint contained to be true in such manner and form as the same are therein and thereby set forth and alleged,(16) doth demur in law to the \*said bill, and for cause of demurrer sheweth that the said complainant hath not by his said bill made such a case as entitles him in a court of equity to any discovery or relief from or against this defendant(17) touching the matters contained in the said bill or any of such matters; [*Or thus*: And for cause of demurrer saith that it appears by the said complainants' own showing by their said bill of complaint that the said complainants are not entitled to the discovery or relief prayed by their said bill against this defendant;(18)] Wherefore and for divers other good causes of demurrer appearing in the said bill of complaint this defendant doth demur to the said bill, and to all the matters and things therein contained, and prays the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said bill, and he humbly prays to be hence dismissed with his reasonable costs in this behalf sustained.

[ \*624 ]

(14) *Pitts v. Short*, 17 Ves. 215, 6, 2d edit.; 2 Madd. Ch. Pr. 286.

(15) See 2 Madd. Ch. Pr. 287; *Edsell v. Buchanan*, 2 Ves. jun. 83; *Cawthorn v. Chalie*, 2 Sim. & Stu. 129; *Davies v. Williams*, 1 Sim. 8.

(16) If a demurrer is only to a part of the bill, (as where a discovery is sought of the defendant's title) insert the following form after the word 'alleged':

'As to so much of the said bill as seeks that this defendant may answer and set forth whether, &c. or as seeks any discovery from this defendant whether, &c. [*setting out the interrogatories*] this defendant doth demur in law, and for cause of demurrer sheweth,' &c.

(17) If the demurrer is only to a part of the bill, insert the following words after the word 'defendant.'

'As to the matters hereinbefore specified or any of such matters: Wherefore,' &c. [*and conclude as in page 631, postea.*]

(18) See other forms of a demurrer by a defendant for want of equity, *postea*, p. 626, 7, 8.

II. *A general demurrer for want of equity (where there are several defendants.)*

In Chancery.

The demurrer of D. D., J. D. and S. K. three of the defendants to the bill of complaint of S. S. complainant.

These defendants by protestation not confessing or acknowledging all or any of the matters and things in the said complainant's bill contained to be true in such manner and form as the same are therein and thereby set forth and alleged, do demur to the said bill, and for cause of demurrer show that the said complainant has not by his said bill made such a case as entitles him in a court of equity to any discovery from these defendants respectively or any of them, or to any relief against them, as to the matters contained in the said bill or any of such matters, and that any discovery which can be made by these defendants or any of them touching the matters complained of in the said bill or any of them cannot be of any avail to the said complainant for any of the purposes for which a discovery is sought against these defendants by the said bill, nor entitle the said complainant to any relief in this court touching any of the matters therein complained of; Wherefore and for divers other good causes of demurrer appearing in the said bill these defendants do demur thereto, and they pray the judgment of this honorable court whether [ \*625 ] \*they or either of them shall be compelled to make any further or other answer to the said bill, and they humbly pray to be hence dismissed with their reasonable costs in this behalf sustained.

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\*III. *Demurrer to so much of a bill as sought a discovery of title-deeds, for want of an affidavit being annexed to the bill that the same were not in the plaintiff's custody or power.*(19)

The demurrer of, &c.

This defendant by protestation, &c. [*see form No. I. p. 623,*] as to so much of the said bill as seeks a discovery of the marriage settlement of — the late father and mother of the said complainant, and of the title-deeds and writings relating to the messuages lands and tenements in the said bill mentioned, and that the same may be delivered up to the said complainant, this defendant doth demur in law, and for cause of demurrer sheweth that no person or persons by the ancient and approved rule of this honorable court shall exhibit a bill

(19) *Ld. Red. Tr. Pl. p. 54, 4th ed.*; *Hook v. Dorman*, 1 Sim. & Stu. 227; and see note (2), *antea*, p. 269.

of complaint in this honorable court against any other person or persons for a discovery of deeds and writings belonging to such complainant, and upon which if in his possession he might have remedy at law and pray relief relating thereto, unless such complainant or complainants shall at the time of exhibiting such bill make affidavit that he she or they have not such deeds and writings so sought after in his her or their custody or power; Wherefore and for that the said complainant hath not made affidavit of not having the deeds and writings in his custody or power so sought after by the said bill this defendant doth demur to such part of the said bill as aforesaid and humbly prays the judgment of this court whether he shall be compelled to make any further or other answer to such part of the said bill as is so demurred unto.

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\*IV. *Demurrer to a bill of interpleader, for want of the usual affidavit that the plaintiff does not collude with any of the defendants.*(20) [ \*626 ]

The demurrer of, &c.

This defendant by protestation, &c. [*see form No. I. p. 623,*] to the whole of the said bill doth demur, and for cause of demurrer sheweth that although the said complainant's said bill is on the face thereof a bill of interpleader, and prays that this defendant and the other defendants thereto may interplead together concerning the matters therein mentioned, and may be restrained by injunction from proceeding at law against the said complainant touching such matters, yet the said complainant hath not annexed an affidavit to his said bill that he does not collude concerning such matters with any of the defendants thereto, which affidavit ought, according to the rules of this honorable court as this defendant is advised, to have been made and annexed to the said bill; Wherefore, &c. [*as in form No. I. p. 623.*]

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\*V. *Demurrer to a bill of interpleader,*(21)*for want of the necessary affidavit, and also for want of equity.*

The demurrer of, &c.

This defendant by protestation, &c. [*see form No. I. p. 623,*] doth demur in law to the said bill, and for cause of demurrer sheweth that

(20) Ld. Red. Tr. Pl. 143; 1 Madd. Ch. Pr. 175.

(21) The question in this cause was whether the bill was in fact a bill of interpleader; it was contended that it was not, the word "interplead" not being used in the bill; the material part of the prayer was thus: "And that the said defendants may adjust and determine between themselves to whom," &c.; the demurrer was allowed.

although the said complainant's said bill is upon the face thereof a bill of interpleader, yet the said complainant hath not annexed to his said bill an affidavit that he doth not collude concerning such matters with any of the defendants thereto, which affidavit ought, according to the rules of this court, as this defendant is advised, to have been made by the said complainant; and annexed to the said bill; And for further cause of demurrer this defendant further sheweth that the said bill does not contain sufficient matter of equity whereupon this court can ground any decree in favor of the said complainant, or give the said complainant any relief against this defendant; wherefore, &c. [*as in form No. I. p. 623.*]

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- [ \*627 ] \*\*VI. *Demurrer to a bill for the examination of witnesses de bene esse; the bill not alleging that an action has been commenced, or that there is any impediment to an action being brought, and an affidavit not being annexed to the bill.*(22)

The demurrer of, &c.

This defendant by protestation, &c. [*see form No. I. p. 623,*] and for cause of demurrer sheweth that the said complainant in and by his said bill claims to be entitled to the estates and premises therein mentioned, and the said complainant by his said bill prays that he may be at liberty to examine his witnesses, &c. yet the said complainant has not stated, nor does it appear in and by his said bill that any action at law has been commenced by him to establish his right, or that there was or is any impediment to any such action being brought by the said complainant, or that the several persons sought to be examined as witnesses or any of them are or is resident abroad, or are about to quit the kingdom, nor hath the said complainant by affidavit annexed to the said bill made oath that the several persons sought to be examined as witnesses or any of them are or is aged or infirm or any other circumstance which may render the testimony in danger of being lost; Wherefore, &c. [*as in form No. I. p. 623.*]

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- \*VII. *Demurrer for multifariousness.*(23)

The demurrer of, &c.

This defendant by protestation, &c. [*see form No. I. p. 623,*] doth demur to the said bill, and for cause of demurrer sheweth that it

(22) See note (9), *antea*, p. 359; *Phillips v. Carew*, 1 P. Wms. 116, and note (z), *ib.* 6th ed.

(23) *Ld. Red. Tr. Pl.* 181; and note (b), *ibid.*; *Brookes v. Lord Whitworth*, 1 Madd. Rep. 86, 88, and note (d), *ibid.*; *Salvidge v. Hyde*, 5 Madd. 138; S. C. on appeal,



appears by the said bill that the same is exhibited against this defendant and J. H., J. C., T. S. and W. T. for several and distinct matters and causes, in many whereof as appears by the said bill this defendant is not in any manner interested or concerned, by reason of which distinct matters the said plaintiff's said bill is drawn out to a considerable length, and this defendant is compelled to take a copy of the whole thereof, and by joining distinct matters \*together which do not depend on each other in the said bill, the pleadings orders and proceedings will in the progress of the said suit be intricate and prolix, and this defendant put to unnecessary charges in taking copies of the same, although several parts thereof no way relate to or concern him; for which reason and for divers other errors appearing in the said bill, this defendant doth demur thereto, and he prays the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said bill, and he humbly prays to be hence dismissed, with his reasonable costs in this behalf sustained.

[ \*628 ]

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*\*VIII. Part of a demurrer for multifariousness to a bill against several purchasers of parts of an estate.(24)*

And for cause of demurrer sheweth that the said bill is exhibited against this defendant and twenty other persons as defendants thereto for several and distinct and independent matters and causes which have no relation to each other, and wherein or in the greater part whereof this defendant is in no way interested or concerned, and ought not to be implicated.

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*\*IX. Demurrer for want of equity and also for multifariousness to a bill for discovery and for a commission to examine witnesses abroad in relation to two actions at law commenced against the plaintiff in equity.(25)*

The demurrer of, &c.

This defendant by protestation, &c. [see form No. I. p. 623,] and for cause of demurrer sheweth that the said complainants have not in and by their said bill shown any right or title to the discovery, or to the commission and injunction thereby sought; and for further

1 Jac. R. 151. In *Rayner v. Julian*, 2 Dick. 677, a demurrer to a bill "for that it was multifarious" was overruled as informal.

An objection for multifariousness must be taken by demurrer, and cannot be made at the hearing of the cause; *Ward v. Cooke*, 5 Madd. 122; *Wynne v. Callander*, 1 Russ. 293, 7.

(24) See the authorities referred to in the preceding note.

(25) See *Shackell v. Macauley*, 2 Sim. & Stu. 79; *Thorpe v. Macauley*, 5 Madd. 218; and see also 5 Madd. p. 146.

cause of demurrer this defendant sheweth that the discovery and commission by the said bill sought, relate to several distinct matters by the said bill alleged to have been pleaded by the said complainants to two several and distinct actions at law in the said bill alleged to have been commenced by this defendant against the said complainants, and which two several actions appear by the said bill to relate to several and distinct matters and to be founded on several and distinct causes of action, and such several and distinct matters so pleaded by the said complainants to the said two several actions ought not to have been joined together in one bill: Wherefore and for other good causes of demurrer apparent in the said bill, &c. [*as in form No. I. p. 623.*]

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[ \*629 ] \*\*X. *Demurrer for want of parties to a bill by a creditor of a testator who had died abroad.*(26)

The demurrer of, &c.

These defendants by protestation, &c. [*see form No. II. p. 624,*] do demur to the said bill, and for cause of demurrer show that it appears by the said complainant's said bill that a personal representative of Robert Stewart the testator therein named, resident within the jurisdiction of the court, is a necessary party to the said bill, and yet that there is no personal representative of the said testator resident within the jurisdiction of the court a party to the said bill: Wherefore, &c. [*as in form No. II. p. 624.*]

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# XI. *Demurrer for want of parties.*

The demurrer of, &c.

These defendants by protestation, &c. [*see form No. II. p. 624,*] do demur to the said bill, and for cause of demurrer show that it appears by the said complainant's own showing in the said bill, that J. S. therein named is a necessary party to the said bill, inasmuch as it is therein stated, that N. M. the testator in the said bill named, did in his life-time by certain conveyances made to the said J. S. in con-

(26) Ld. Red. Tr. Pl. 180, 4th ed. and note (s), *ibid.*; *Lowe v. Fairlie*, 2 Madd. Rep. 101. The demurrer need not point out the parties by name; it is sufficient if it points out who the individuals are by some description enabling the plaintiff to make them parties; 2 Madd. Ch. Pr. 293, 4; and see *Pyle v. Price*, 6 Ves. 780, 1; and 11 Ves. 369.

*Semble*, such demurrer should be to the whole bill; see *East India Company v. Coles*, reported in note to *Blackburn v. Jepson*, 3 Swanst. 142, 3.

sideration of —l., convey to him by way of mortgage certain estates in the said bill mentioned to have been devised for the purpose of paying the said testator's said debts and legacies, but yet the said complainant has not made the said J. S. a party to the said bill : Wherefore, &c. [*as in form No. II. p. 624.*]

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\*XII. *Demurrer to so much of a bill as sought a discovery of waste committed by the defendant, the plaintiff not having waived by his bill all penalties and forfeitures.*(27)

\*630 ]

The demurrer of, &c.

This defendant by protestation, &c. [*see form No. I. p. 623,*] as to so much and such part of the said bill as seeks to have discovery from this defendant of any timber or young timber trees in the said bill suggested to have been since the death of Sir J. T. bart. this defendant's late father deceased in the said bill mentioned, felled or cut down on the estate in the said bill mentioned or any part thereof, by this defendant, or by his directions, or as seeks to have any discovery of all or any sum or sums of money for which the same or any part thereof were or was sold by this defendant, doth demur, and for cause of demurrer sheweth that by the known and settled rules of this honorable court no person ought to be compelled to set forth or discover any matter or thing which doth or may subject him to any pains penalties or forfeitures whatsoever ; and therefore as the said discovery sought by the said complainant's said bill doth and may by the known law of this kingdom subject and make this defendant liable to several pains penalties and forfeitures, and which the said complainant hath not in and by his said bill waived as is usual in cases of the like nature to do, this defendant doth demur in law to so much and such parts of the said bill as pray the aforesaid discovery, and humbly demands the judgment of this honorable court whether he ought to be compelled to make any further or other answer than as aforesaid to such parts of the said bill as he hath so demurred unto.

(27) See *Ld. Red. Tr. Pl.* 197, 4th ed. ; *Madd. Ch. Pr.* vol. i. p. 214, vol. ii. p. 290.

XIII. *Demurrer to so much of a bill as sought a discovery which might subject the defendants to a charge of compounding a felony,*(28)—*accompanied by an answer to the other parts of the bill.*

The demurrer of the defendants C. D., G. H. and E. his wife to part, and their answer to other part of the bill of complaint of A. B. complainant.

[ \*631 ] As to so much of the complainant's bill as seeks to charge these \*defendants or any of them with the concealing or compounding the felony in the bill mentioned, or as seeks to compel any of these defendants to make any discovery touching the same or any of the matters relating thereto in the said bill suggested or alleged, these defendants by protestation not confessing or acknowledging any of the matters or things relating thereto in the said bill comprised, to be true in such sort manner and form as the same are therein alleged or set forth, these defendants do demur, and for cause of demurrer show that they ought not to be compelled to discover or set forth any matters whereby they may impeach or accuse themselves of an offence or crime for which they may subject themselves to fine or to corporal punishment; Wherefore and for divers other good causes of demurrer in the complainant's said bill of his own showing appearing, these defendants as to so much of the complainant's said bill as before is set forth do demur, and do demand the judgment of this honorable court whether they or any of them ought or shall be compelled to make any answer thereto other or otherwise than as aforesaid; and these defendants not waiving their said demurrer but wholly relying and insisting thereon, for answer to so much of the said bills as these defendants are advised is material or necessary for them or any of them to make answer unto, severally answering say they deny, &c.

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XIV. *Demurrer on the ground that the plaintiff does not appear by the bill to have proved the will of his testator.*(29)

The demurrer of, &c.

These defendant by protestation, &c. [see form No. II. p. 624,] do demur to the said bill, and for cause of demurrer show that the scope and end of the said complainants' bill is to be relieved touching several sums of money by the said bill supposed to be due from these defendants to one A. B., deceased in the said bill named, which the said complainants would or seek by their said bill to claim as exe-

(28) See 1 Madd. Ch. Pr. 214; *Claridge v. Hoare*, 14 Ves. 59; *Cartwright v. Green*, 8 Ves. 405, 2d edit.

(29) See *Ld. Red. Tr. Pl.* 155, 4th ed.

cutors to the said A. B., and yet they have not alleged in or by their said bill that they have proved the will of the said A. B. (if any such was made) or otherwise taken upon themselves the burthen or execution thereof, or any ways entitled themselves unto her personal estate and to sue for the same: Wherefore, &c. [*as in form No. II. p. 624.*]

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**\*\*XV.** *Demurrer on the ground that the plaintiff had not proved his testator's will in the proper Ecclesiastical Court.*(30) [ \*632 ]

The demurrer of, &c.

This defendant by protestation, &c. [*see form No. I. p. 623,*] doth demur to the said bill, and for cause of demurrer sheweth that according to the complainant's own showing in his said bill of complaint it appears that C. R. the testator in the said bill named died possessed of *bona notabilia* out of the diocese of the Bishop of Chichester, and particularly of *bona notabilia* in the diocese of the Bishop of London which is in the province of the see of Canterbury, and that it appears by the said complainant's said bill that the said complainant hath proved the said testator's will in the said bill mentioned in the Consistory Court of the Bishop of Chichester only: Wherefore, &c. [*as in form No. I. p. 623.*]

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**XVI.** *Demurrer by the wife and committee of the person of a lunatic, to so much of a bill as sought to perpetuate the testimony of witnesses to the alleged will of the lunatic,*(31) *accompanied by her Answer to the other parts of the bill.*

The several demurrer and answer of B. C. wife of T. C. a lunatic, one of the defendants to the bill of complaint of S. E. complainant.

This defendant by protestation, &c. [*see form No. I. p. 623,*] as to so much of the said bill as seeks to have the witnesses to the alleged will of the said T. C. this defendant's said husband examined and their testimony recorded in this honorable court in order to the perpetuating thereof, this defendant doth demur, and for cause of demurrer sheweth that the said T. C. at the time of the exhibiting of the said bill was and still is living, and that the witnesses to the said alleged will of the said T. C. ought not to be examined to prove the same nor ought their testimony to be recorded during the life of the said T. C., and for that the

(30) See *Comber's Case*, 1 P. Wms. 766; *Tourton v. Flower*, 8 P. Wms. 370, 6th ed.

(31) See *Ld. Red. Tr. Pl. p. 156*; *Sackwell v. Ayleworth*, 1 Vern. 105; 6 Ves. 259, 260.

[ \*633 ]

said complainant hath any right or title by or under the said will until the said T. C.'s death: Wherefore and for divers other errors and imperfections good causes of demurrers appearing in the said bill this defendant doth demur to such parts of the said bill as aforesaid; \*And as to the residue of the said bill this defendant not waiving her said demurrer but relying thereon, and saving and reserving to herself all and all manner of benefit and advantage of exception that can or may be had or taken to the many errors uncertainties and insufficiencies in such residue of the said bill contained, doth answer and say she hath heard and believes it to be true that the said T. C. did several years ago but when exactly this defendant cannot set forth, become disordered in his mind and hath ever since been and still is incapable of managing himself or his affairs, and that the said complainant did on or about the — day of — prefer a petition to the then Lord High Chancellor of Great Britain praying that a commission might issue to inquire of the lunacy of the said T. C.; And this defendant further answering saith that a commission issued accordingly, and that such inquisition was taken thereon as in the said bill is for that purpose mentioned and set forth, and that the said T. C. doth still continue and is a lunatic; but this defendant for greater certainty craves leave to refer to the records of the said commission and inquisition; And this defendant further saith she admits it to be true that after the said T. C. was found a lunatic as aforesaid, the care and custody of his person was committed to this defendant, and the care and management of his estate was committed to W. C. in the said bill named, and that the said T. C. her husband is still living: And this defendant doth deny all manner of combination and confederacy in the said bill charged, and humbly prays to be hence dismissed with her reasonable costs and charges in this behalf sustained.

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*\*XVII. Demurrer as to so much of the discovery and relief sought by the bill with respect to certain part of the premises therein mentioned, that the plaintiff's remedy is at law; (32) and with respect to other part of the premises, that he has shown no other title thereto; and Plea in bar as to so much of the bill as sought to set aside the conveyance of other part of the premises, of the indentures of conveyance by lease and release for a valuable consideration, supported by an answer denying fraud or any undue influence having been used.*

In Chancery.

The demurrer, plea, and answer of A. F. one of the defendants to the bill of complaint of J. B. complainant.

This defendant by protestation, &c. [see form No. I. p. 623,] as

(32) See *Loker v. Role*, 3 Ves. 7, 2d edit.; *Crow v. Tyrrel*, 3 Madd. 182; and note (1), ante, vol. i. p. 169.

to so much of the said bill as seeks to compel this defendant to account with the said complainant for the rents and profits of all or any of the estates therein mentioned (except of the premises in Mary Street therein alleged to have been purchased by T. R. one \*of the defendants to the said complainant's bill) received by her, or which but for her wilful default she might have received, and also as to so much of the said bill as seeks to compel this defendant to deliver up to the said complainant or unto such person or persons as she should appoint the possession of all or any of the said estates and premises in the said bill mentioned (except of the said premises therein alleged to have been purchased by the said defendant T. R.,) and to so much of the said bill as seeks to compel this defendant to deliver up to the said complainant all and every the title-deeds evidences and writings in her custody or power relating to all or any of the said estates and premises in the said bill mentioned (except the said premises therein alleged to have been purchased by the said T. R.,) this defendant doth demur thereto; And this defendant as to the discovery and relief sought by the said bill (save so much thereof as relates to the said premises therein alleged to have been purchased by the said T. R., and so much thereof as relates to the premises in the said bill mentioned to be situate at S. in the county of D.,) for cause of demurrer sheweth that the said complainant can have an effectual and complete remedy in a court of law; and for further demurrer in this behalf this defendant as to so much of the said discovery and relief as relates to the said premises in S. aforesaid, for cause of demurrer saith that the said complainant hath not by the said bill shown that he is entitled to the said estate and premises at S. or any part thereof, or to the rents thereof or of any parts thereof, or to any of the title deeds evidences and writings relating thereto; Wherefore and for divers other good causes of demurrer appearing in the said bill this defendant prays the judgment of this honorable court whether she shall be compelled to make any answer to such parts of the said bill as she has hereinbefore demurred to; And this defendant not waiving her said several demurrers but wholly relying thereon, doth as to so much of the said bill as seeks to have the conveyance of the said premises therein mentioned to be situate at the corner of Mary Street set aside as having been obtained by undue means, and to have the same delivered up to the said complainant to be cancelled, and to compel this defendant to account with the said complainant for the rents and profits of the said last-mentioned premises received by her, or which but for her wilful default she might have received, and also as to so much of the said bill as seeks to compel this defendant to deliver up to the said complainant or unto such person or persons as he should appoint the possession of all and singular the last-mentioned premises, and to deliver up to the said complainant all and every the title-deeds evidences and writings in her custody or power relating thereto, pleads thereto, and for plea saith that by an indenture of bargain and sale bearing date the 10th day of July in the year 1799, and made between the said complainant and A. his wife of the one part, and the said defendant T. R. and W. F. in the said bill named of the other part, he the said com-

[ \*634 ]

As to the discovery and relief sought, (save as to the premises purchased by T. R., and the premises situate at S.,) for that plaintiff's remedy is at law, and as to the premises in S., that plaintiff has not shown that he is entitled thereto;

Plea in bar as to so much of the bill as seeks to set aside the conveyance of other premises, and to compel the defendant to account for the rents, and to deliver up the possession of the premises and of the title-deeds, of a conveyance by lease and release to T. R. and W. F. in fee as

tenants in  
common.

[ \*635 ]

Averments  
that the con-  
sideration  
100*l.* was paid,  
and that nei-  
ther T. R. nor  
W. F. used  
fraud or un-  
due means;

Answer in aid  
of plea, deny-  
ing that T. R.  
and W. F.  
took any un-  
due advan-  
tage, or pre-  
vailed upon  
plaintiff by  
fraud to sell  
his interest in  
the premises,  
or to execute  
the deeds;  
believes that

plainant and his said wife in consideration of the sum of 10*s.* to them therein mentioned to be then paid by the said T. R. and W. F. did bargain and sell the last-mentioned premises with the appurtenances unto the said T. R. and W. F., To hold the same unto the \*said T. R. and W. F. their executors administrators and assigns from the day next before the day of the date of the same indenture for the term of one whole year from thence next ensuing; And by a certain indenture of release bearing date the 17th day of the same month of July in the year 1799, and made between the said complainant and his said wife of the one part, and the said T. R. and W. F. of the other part; after reciting (amongst other things) that disputes had arisen between the said complainant and the said T. R. and W. F. concerning the premises, for ending whereof the said T. R. and W. F. had agreed to give to the said complainant 100*l.* on condition that the said complainant and A. his wife would grant bargain sell release and confirm the said premises unto the said T. R. and W. F. their heirs and assigns, to which the said complainant had consented, he the said complainant and his said wife, in consideration of the sum of 100*l.* then to them paid by the said T. R. and W. F., did grant bargain sell release and confirm unto the said T. R. and W. F. and their heirs the said last-mentioned premises with the appurtenances, To hold the same unto the said T. R. and W. F. their heirs and assigns as tenants in common and not as joint tenants, To the use of the said T. R. and W. F. their heirs and assigns; by virtue of which indenture all the estate right title and interest of the said complainant in and to the said last-mentioned premises became as this defendant is advised, and was well and effectually conveyed released and assured unto and to the use of the said T. R. and W. F. their heirs and assigns; And this defendant doth aver to the best of her knowledge information and belief that the said sum of 100*l.* was actually paid by the said T. R. and W. F. to the said complainant, and that neither the said T. R. nor the said W. F. prevailed upon the said complainant by fraud or misrepresentation or any undue means to execute the said indentures of bargain and sale and release or either of them; all which last-mentioned matters and things this defendant doth plead in bar to so much of the said bill as is hereinbefore pleaded to; And this defendant humbly prays the judgment of this honorable court whether she ought to make any further answer to so much of the said bill as is hereinbefore pleaded to; And this defendant not waiving her said several demurrers and plea but wholly relying and insisting thereon, for answer to so much of the said bill as this defendant is advised is material or necessary for her to make answer unto in aid of her said plea, answereth and saith she denies to the best of her knowledge remembrance information and belief that the said T. R. and W. F. or either of them ever took an undue advantage of the said complainant's distress or prevailed upon the said complainant by fraud misrepresentation or any undue means to sell and dispose of his right and interest in the said last-mentioned premises or any part thereof, or to execute the said indentures of bargain and sale and release or either of them; And this defendant further answering saith she hath been informed and believes it



to be true that the said sum of 100*l.* was actually and *bona fide* paid by the said T. R. and W. F. in equal moieties to or to the use of the said complainant, and that the same was considered by the said T. R. and W. F. at the time of the execution of the said several indentures of bargain and sale and release to be a full and \*adequate consideration for the purchase of all the right and interest of the said complainants in and to the last-mentioned premises and every part thereof.

the consideration was paid by T. R. and W. F. to the plaintiff, and

[ \*636 ]

was at the time considered a full and adequate consideration.

XVIII. *Demurrer by husband and wife to so much of the bill as sought to set aside a testator's will, or to restrain proceedings at law, that it appeared by the bill that the husband proved the will in the Prerogative Court, that such court has exclusive jurisdiction, and that no equity is shown to stay the proceedings at law ;—Plea by the husband as to so much as sought a distribution of the testator's personal estate, that he made a will bequeathing his residuary estate to the husband, and appointed him executor, and that he has proved the will ;—Answer by both defendants to the residue of the bill.*

The joint and several demurrer of S. N. and E. his wife to part, and the plea of the said S. N. to part and the joint and several answer of the said S. N. and E. his wife to other part of the bill of complaint of M. B. W. T. and J. M. and S. his wife, complainants.

These defendants S. N. and E. his wife, by protestation, &c. [see *form No. II. p. 624,*] as to so much of the said bill as seeks to set aside or impeach or have any relief against the will of R. R. in the said bill named as to the personal estate of the said R. R. or that seeks a discovery from these defendants or either of them, in relation to the said will, or that prays an injunction against this defendant A. N. to stop his proceedings at law against the said W. T. these defendants do demur thereunto, and for cause of demurrer show that it appears by the complainant's own showing that this defendant S. N. hath proved the said will of the said R. R. in the Prerogative Court of the Archbishop of Canterbury, and these defendants are advised that the probate of wills relating to estates and particularly relating to personal estates do properly belong to the Ecclesiastical Courts of this realm, and that the same ought not to be called into question in this honorable court ; And for further cause of demurrer these defendants show that there is not as they are advised any matter or thing set forth in and by the said bill as a foundation of equity for this court to interpose in relation to the action at law commenced by this defendant S. N. against the said W. T. but what is properly cognizable at law, and that the said complainant W. T. may have the same or equal benefit upon a trial at law, if the same is true ; for which reason and for divers other causes these defend-

Demurrer by S. N. and wife as to so much of the bill as seeks relief against the will of R. R., that it appears that S. N. proved the same in the Prerogative Court, and that such court has exclusive jurisdiction ;

and that there is no equity shown to stay proceedings at law by S. N. against W. T.

Plea by S. N. as to so much as seeks to have distribution of R. R.'s

[ \*637 ]

personal estate, that R. R. made a will bequeathing his residuary personal estate to S. N. and appointing him executor; and that he proved the will in the Prerogative Court.

Answer to the residue of the bill.

ants do demur to so much of the said bill as aforesaid, and humbly pray the judgment of this honorable court whether they shall make any further or other answer thereto; And as to so much of the said bill as seeks to have a distribution of the personal estate or effects of the said R. R. according to the statute of distribution of intestates' estates or that seeks an account or discovery of or from \*this defendant S. N. of the personal estate of the said R. R. this defendant S. N. doth plead thereunto, and for plea this defendant saith that the said R. R. did in his life-time on or about the — day of — in the year of our Lord — as this defendant believes duly make and publish his last will and testament in writing, and thereby after giving several legacies therein particularly mentioned, gave and bequeathed all the rest and residue of his real and personal estate unto this defendant to hold to him his heirs and assigns for ever, and of the said will made this defendant sole executor; and that this defendant also after the death of the said testator proved the said will in the Prerogative Court of the Archbishop of Canterbury, as by the probate thereof under the seal of the said court now in the custody or power of this defendant ready to be produced as this honorable court shall direct, and to which this defendant craves leave to refer, doth more fully and at large appear; All which matters and things this defendant S. N. doth aver and is ready to prove as this honorable court shall direct, and doth plead the same in bar to so much of the said bill as for that purpose is hereinbefore mentioned, and humbly craves the judgment of this honorable court whether he shall make any further or other answer thereto; And as to so much of the said bill as these defendants have not before respectively demurred or pleaded unto, these defendants in no sort waiving the benefit of the said demurrer and plea or either of them but wholly relying and insisting thereon, these defendants for answer to the residue of the complainant's said bill or to so much thereof as these defendants are advised is material or necessary for them or either of them to make answer unto, these defendants, each speaking for him and herself, and not the one for the other, they these defendants do severally answer and say as follows, &c.

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\*XIX. *Demurrer to an amended bill, the plaintiff's title to redeem having been obtained after the filing of the original bill and the answer to it.*(33)

The demurrer of, &c.(34)

This defendant by protestation, &c. [see form No. I. p. 623,] doth

(33) See *Pilkington v. Wignall*, 2 Madd. Rep. 240, 4; and *Ld. Red. Tr. Pl.* 207, 4th edit; see also 2 Madd. Ch. Pr. 374, 5.

This demurrer was drawn according to a precedent of a similar demurrer drawn by Lord Redesdale when at the bar, and was allowed; it was held not to be a speaking demurrer; it only stating matter appearing in the bill, not matter out of it.

(34) See *Smith v. Bryon*, 3 Madd. 428, 9; and note (b), ante, p. 564.

demur thereto, and for cause of demurrer saith that the indentures of lease and release in the said bill mentioned to bear date respectively the 15th and 16th days of July 1816, the indenture of release purporting to be made between the said complainant W. M. of the one part and the said complainants J. P. and R. P. of the \*other part, and to be a conveyance of the equity of redemption of the premises therein mentioned and by the said bill sought to be redeemed, appear by the said bill to bear date after the filing of the original bill of complaint of which the said bill of the said J. P., R. P. and W. M. purports to be an amended bill; Wherefore and for divers other good causes of demurrer appearing in the said bill of the said J. P., R. P. and W. M. this defendant doth demur thereto, and he prays the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said bill of the said J. P., R. P., and W. M., and humbly prays to be hence discharged with his reasonable costs in this behalf sustained.

[ \*638 ]

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*\*XX. Demurrer for want of equity to a supplemental bill.*(35)

The demurrer of, &c.

These defendants by protestation, &c. [*see form No. II. p. 624,*] do demur in law to the said supplemental bill of complaint and for cause of demurrer show that the said supplemental bill of complaint doth not contain any matter to entitle the said complainant to any such discovery from these defendants or to any such relief against them as is sought and prayed in and by the said supplemental bill; Whereof these defendants do demur thereto, and pray the judgment of the court whether they ought to be compelled to put in any further or other answer to the said complainant's said supplemental bill, and humbly pray to be hence dismissed with their reasonable costs in this behalf sustained.

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*\*XXI. Demurrer to a bill of review and supplemental bill, on the ground that there are no errors in the decree, and that the leave of the court was not first obtained.*(36)

These defendants by protestation, &c. [*see form No. II. p. 624,*] do demur in law thereto, and for cause of demurrer show that there are no errors in the record and premises and in the decree of the — day of — in the said bill of review and supplemental bill mentioned, nor is there any sufficient matter alleged in the said

(35) See *Adams v. Dowding*, 2 Madd. Rep. 53.

(36) See *Ld. Red. Tr. Pl.* p. 84, 203, 4, 4th ed.; 2 Madd. Ch. Pr. 542.

[ \*639 ] bill of review and supplemental bill to entitle the said complainant to reverse the said decree; and for divers other errors and defects \*appearing in the said bill of review and supplemental bill, these defendants do demur in law thereto; And these defendants for further cause of demurrer humbly show that by an order of this honorable court bearing date the 17th October in the fifteenth year of his present Majesty's reign, It is ordered, amongst other things, that no supplemental or new bill in nature of a bill of review grounded upon any new matter discovered or pretended to be discovered since the pronouncing of any decree of this court, in order to the reversing or varying of such decree, shall be exhibited without the special leave of the court first obtained for that purpose; Wherefore and for that the said complainant doth not allege by the said bill of review and supplemental or new bill that he had first obtained leave of this court for exhibiting the said bill of review and supplemental or new bill, these defendants demur in law thereto, and humbly pray the judgment of the court whether they ought to be compelled to put in any further or other answer to the said complainant's said bill of review and supplemental or new bill, and humbly pray to be hence dismissed with their reasonable costs in this behalf sustained.

[ \*640 ]

## \*CHAPTER XI.

PLEAS.(1)<sup>b</sup>I. *Plea of an alien enemy.*(2)

The plea of — defendant to the bill of complaint  
of — complainant.

This defendant by protestation not confessing or acknowledging all or any of the matters and things in the said complainant's said bill

(1) As to the form and requisites of pleas in general, see *Ld. Red. Tr. Pl.* 294, 300, 4th edit.; *Beames on Pleas*, p. 7, 32, 42; 2 *Madd. Ch. Pr.* p. 297.

A plea may be to the *whole* bill, or to *part* only. If a plea does not go to the whole bill it must clearly and precisely express to what part of the bill the defendant pleads; if the plea is general with an exception of matters after mentioned and is accompanied by an answer, the plea is bad; but if the exception is clearly stated and does not require a reference to any other part of the record to make it intelligible, it is sufficient; see the authorities above referred to; see also *Howe v. Duppa*, 1 *Ves. & Bea.* 514.

A plea must not contain unnecessary averments; *Cork v. Wilcock*, 5 *Madd.* 330.

In what cases a plea is required to be put in on oath, see *Ld. Red. Tr. Pl.* p. 301; *Beames on Pleas*, 316; *Ord. Ch. ed. Beames*, 26, 7; 19 *Ves.* 81, 2.

(2) See *Ld. Red. Tr. Pl.* p. 229, 4th edit.; *Beames on Pleas*, p. 112, 254, and p. 329, where a form of a similar plea is inserted; see also *Evans v. Richardson*, 3 *Mer.* 469.

<sup>b</sup> The matters set up in a plea must be a complete bar to the equity of the bill; and if there is any matter of equity in the bill to which a bar is not set up by the plea, it must be set aside; *Piatt v. Oliver*, 1 *McLean*, 295; therefore a plea in bar to a bill, denying only part of the material facts stated in the bill, will not avail; for a

mentioned to be true in such manner and form as the same are therein and thereby set forth and alleged, doth plead thereunto, and for plea saith that the said complainant is an alien born in foreign parts, that is to say, in the kingdom of Spain, out of the allegiance of our Lord the now King, and under the allegiance of a foreign Sovereign, that is to say, of the King of Spain, an enemy to our Lord the King; and that the said complainant before and at the time of his exhibiting his

mere denial of facts is proper for an answer, but not for a plea. *Milligan v. Milledge*, 3 Cranch, 220. The plea must be perfect in itself, so that if true, it will make an end to the cause; *Allen v. Randolph*, 4 Johns. C. R. 693; see also, *Bogardus v. Trinity Church*, 4 Paige, C. R. 178; and it must set up new matter; *Bailey v. Le Roy*, 2 Edw. Ch. 514; therefore, where all the facts set up by a plea appear upon the face of the bill, the plea is bad. *Phelps v. Garrow*, 3 Edw. Ch. 139. If there are several pleas, or a plea and a demurrer, to distinct parts of a bill, each plea or demurrer must distinctly specify what part of the bill it is intended to cover; *Van Hook v. Whitlock*, 3 Paige, C. R. 409; *Davison v. Schermerhorn*, 1 Barb. 480; and where a defendant pleads to one part of the bill and answers another, these defences must clearly refer to separate and distinct parts of the bill. *Clark v. Saginaw City Bank*, Harring. Ch. 240. One plea in bar to the whole bill, and several pleas to distinct parts of the same bill, are bad. *Van Hook v. Whitlock*, 3 Paige, C. R. 409. A plea of matter in pais, and a plea in bar of matter in pais, must be filed on oath. *Dunn v. Keezin*, 3 Scam. 292. And where the plaintiff waives an answer under oath, a plea must nevertheless be sworn to. *Heartt v. Corning*, 3 Paige, C. R. 565.

An answer overrules a plea to the same matter. *The Bank v. Dugan*, 2 Bland, 254; and where the defendant in suit for specific performance, pleads the Statute of Frauds, and answers admitting the contract, the answer overrules the plea; *Episcopal Church v. Leroy*, Riley, Ch. 156; but a plea in bar is said not to be waived by an answer filed simultaneously. *Saddler v. Glover*, 1 B. Monr. 53.

Where the plea to a bill of discovery in aid of an action at law presents a question proper to be made in the action, and presents no reason why discovery should not be made, the plea is a nullity. *Green v. McCarroll*, 24 Miss. 427. A plea of a stated account must aver that the accounts settled all dealings between the parties, and that they were just, and fair, and due, and these averments must be supported by an answer to the same effect. *Schwartz v. Wendell*, Harring. Ch. 395.

Where in an equity suit to foreclose a mortgage, a defendant, who was joined as a subsequent incumbrancer, pleaded in bar that a receiver had been appointed *pendente lite*, in a creditor's bill, brought by him against the mortgagor, who was the other defendant, it was held, that the plea was manifestly bad and frivolous; and it seems it is not necessary to make such receiver a party by a supplemental bill. *Wilson v. Wilson*, 1 Barb. Ch. R. 592. Where to a bill of review, a plea was filed, not being a plea in bar of a former recovery, but that a writ of error to the decree sought to be reviewed, had been dismissed by the Supreme Court, it was held, that it was not necessary in such plea to set out the entire record of the judgment of the Supreme Court dismissing the writ of error, but only so much of the leading facts as were relied on by the defendants as a bar to the complainant's bill, in a distinct and issuable manner. *Rice v. Carey*, 4 Geo. 558. A plea that a former bill has been brought for the same matter, a demurrer sustained thereto, and an appeal to the Supreme Court granted, should allege specifically that the appeal had been regularly certified to the Supreme Court, and was still therein pending. *Moss v. Ashbrooks*, 7 Eng. 369. It is sufficient in pleading to a bill filed in the name of a company, and A. and B., alleging an assignment of the property of such company to A. and B., to aver that they are not the assignees of such company, and that by a decree of a court, remaining in full force, such assignment has been set aside, and the property placed in the hands of a receiver. *Life Insurance and Trust Company v. Davis*, 4 Edw. Ch. 538. A plea to a bill to set aside a settled account for fraud, that the cause of action arose ten years before, and the fraud, if any, was discovered six years before, is not bad for duplicity. *Boggs v. Forsyth*, 2 Sandf. Sup. Ct. 533. Where stockholders in a bank are personally liable for the ultimate redemption of its bills, to a suit by a bill holder against a stockholder, a plea that the bank has assets which have not been appropriated, without specifying what they are, is demurrable for uncertainty. *Lane v. Morris*, 8 Geo. 468. A plea which negatives material facts set forth in complainant's bill, necessary to his title, and of which discovery is sought, must be accompanied by an answer. *Cox v. Mayor, &c. of Griffin*, 17 Geo. 249.

said bill of complaint against this defendant was and still is an enemy of our Lord the now King, and an inhabitant of C. under the government of the said King of Spain, and adhering to our said Lord the King's enemies; All which matters and things this defendant doth aver to be true and pleads the same to the whole of the said bill and humbly demands the judgment of this honorable court whether he ought to be compelled to make any answer to the said bill of complaint, and humbly prays to be hence dismissed with his reasonable costs in this behalf most wrongfully sustained.

J. L.

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[ \*641 ] \*II. *Plea that the defendant is not the deceased's personal representative as alleged in the bill.*(3)

The plea of, &c.

This defendant by protestation, &c. [*see form No. I. p. 640,*] to all the discovery and relief sought and prayed by the said complainant's said bill he this defendant doth plead, and for plea saith that he this defendant is not the executor or administrator or the legal personal representative of the said A. B. as in the said bill alleged, which said representative or representatives ought to be made party or parties to the said complainant's said bill as this defendant is advised; All which matters and things this defendant avers to be true and pleads the same to the said bill, and humbly demands the judgment of this honorable court, &c.

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\*III. *Plea to a bill by assignees of a bankrupt, that the same was filed without the consent of the creditors.*(4)

The plea of, &c.

This defendant by protestation, &c. [*see form No. I. p. 640,*] and for plea saith that by the statute made and passed in the 5th year of the reign of his Majesty King George the Second, intituled, "An act to prevent the committing of frauds by bankrupts,"(5) it is provided that no suit in equity shall be commenced by any assignee or assignees without the consent of the major part in value of the creditors of such bankrupt who shall be present at a meeting of the creditors pursuant to notice to be given in the London Gazette for that purpose; And this defendant doth aver that the said bill was filed by the said complainants as the assignees of the estate and effects of

(3) See *Ld. Red. Tr. Pl. p. 220, 234*; *Beames on Pleas, p. 130, 256.*

(4) See *Ocklestone v. Benson*, 2 *Sim. & Stu.* 265.

(5) *C. 30, s. 38*; and see the 6 *Geo. 4, c. 16, s. 88*, and note (1), *antea*, vol. i. p. 111; *Eden's Bank. Laws*, p. 342.

the said bankrupt T. C. without the consent of the major part in value of the creditors of the said bankrupt present at a meeting of the creditors pursuant to notice given in the London Gazette for that purpose; And this defendant doth therefore plead the matters aforesaid, &c.

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*\*IV. Plea of bankruptcy of the plaintiff.*(6)

[ \*642 ].

The plea of, &c.

This defendant by protestation, &c. [*see form No. I. p. 640,*] doth plead to the said bill, and for plea saith she hath been informed and believes that the said complainant and J. B. the younger his son did for some years before the month of — carry on the business of merchants as copartners together at L. in the county of Y.; And that they were before and on, &c. jointly indebted on account of the partnership dealings to many persons to a large amount in the whole and particularly to H. W. in the sum of —£.; And that the said complainant and the said J. B. the younger were before and on, &c. severally indebted on their respective separate accounts to many persons to a large amount in the whole; And that the said complainant and the said J. B. or one of them on their said partnership account before the said, &c. committed one or more act or acts of bankruptcy; And that a commission of bankruptcy under the great seal of Great Britain was on the said — day of — duly issued against them under the names of J. B. the elder and J. B. the younger on the petition of the said H. W., and that they were thereupon by the major part of the said commissioners named in the said commission soon after duly found and declared to be bankrupts as copartners; And that the said H. W., &c. were duly chosen assignees of the estate and effects of the said complainant and his said son under the said commission; And that the usual assignment was made by the major part of the said commissioners named in the said commission unto the said H. W., &c. of the personal effects of the said complainant and his said son and each of them; And that by indenture of bargain and sale duly enrolled in this honorable court in the year —, the major part of the commissioners named in the said commission of bankruptcy also made the usual conveyance unto the said assignees of all the real estate of the said complainant and his said son and each of them; And that the complainant shortly after the issuing of the said commission of bankruptcy obtained the usual certificate from — in number and value of the joint creditors of him and of his son also and also of the separate creditors of him the said complainant who proved their debts under

(6) See *Ld. Red. Tr. Pl. p. 232*; *Beames on Pleas, p. 118, 254*; a plea of bankruptcy must state distinctly and in succession the facts upon which the bankruptcy rests; *Carlton v. Leighton*, 3 Mer. 667.

A plea that the plaintiff had taken the benefit of an act for the relief of insolvent debtors is to be found in 16 Ves. 467, 2d edit.; *De Minckwitz v. Udney*.

[ \*643 ]

the said commission of bankruptcy and also from the major part thereof from the commissioners named in the said commission; And that the said complainant duly conformed himself to the several laws made and in force concerning bankrupts; And this defendant hath also been informed and believes that such certificate was duly confirmed \*by the Right Honorable the late Lord Chancellor; And this defendant for further plea saith she believes that the said commission of bankruptcy hath never been superseded but that the same is now remaining in full force, and therefore as the right claimed by the said bill to the estates therein mentioned and to the rents and profits appears by the said bill to have accrued, and if the same is just and well founded did really accrue long before the date and issuing forth of the said commission, this defendant is advised that the said complainant's right and interest to and in the said estate and the rents and profits thereof, was at the time of the filing of the said bill and is now vested in the said assignees under the said commission of bankruptcy for the benefit of them and the other creditors of the said complainant and his said son jointly and of the said complainant alone; All which matters and things this defendant doth aver to be true, and she pleads the same to the whole of the said bill, and humbly demands the judgment of this honorable court whether she ought to be compelled to make any further or other answer thereto.

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*\*V. Plea by bankrupts of their certificate to the whole of the plaintiff's bill (brought in respect of a demand arisen previously to their bankruptcy,) excepting only as to the allegation in the bill that the bankrupts claimed an interest in the matters in question, which by answer and disclaimer accompanying the plea they disclaimed, setting forth a release executed to their assignees of all right and interest in their surplus estate.(7)*

#### The plea of, &c.

These defendants respectively by protestation, &c. [see form No. I. p. 640,] do plead to so much of the said bill as seeks that these defendants may make good to the said complainant the loss and damage alleged to have been sustained by him by the detention of the four hundred and thirty-four casks of pearl ashes in the said bill of complaint in that behalf mentioned, and that all necessary directions might be given to ascertain the amount of such loss; and for plea thereto, and to all the discovery sought from these defendants with relation thereto or to any other matters in the said bill contained,

(7) See *De Tastet v. Sharpe*, 2 Madd. 51; the plaintiff's bill was held analogous to the remedy by action at law for money had and received, and considered as brought in lieu of that action, and consequently that the certificate was a bar.

A plea of bankruptcy of the defendant is good where the decree sought is *ad rem* and not a personal demand, notwithstanding the commission has issued *after the filing of the bill*; *Turner v. Robinson*, 1 Sim. & Stu. 3.



except as to the question whether these defendants or one and which of them have not or hath not or do not or doth not claim some and what interest in the matters in question in this cause, these defendants say that by a statute or act of parliament made and \*passed in the 5th year of the reign of his late Majesty King George II. and afterwards made perpetual, intituled "An act to prevent the committing of frauds by bankrupts," it is amongst other things enacted that all and every person and persons so become or to become bankrupts as in such act as aforesaid, who should within the time thereby limited surrender him her or themselves to the acting commissioners named and authorized in or by any commission of bankrupt awarded or to be awarded against him her or them as in and by the said act directed, should have certain allowances in the said act in that behalf particularly mentioned out of the net produce of their estate, and every such bankrupt should be discharged from all debts by him or them due and owing at the time that he she or they did become bankrupt; and that in case any such bankrupt should be afterwards arrested prosecuted or impleaded, such bankrupt should and might plead in general that the cause of such action or suit did accrue before such times as he she or they became bankrupts, and might give the said act and special matter in evidence; And these defendants do aver that they did respectively become bankrupt since the period in the said act referred to for the commencement of the operation and effect thereof, and that a commission of bankrupt under the great seal of Great Britain, bearing date at Westminster, the 1st day of October 1812, was awarded and issued against them together with G. Sharpe the elder deceased their late father and copartner in trade, under which commission they these defendants and the said late G. Sharpe the elder respectively were duly found and adjudged bankrupt, and that these defendants and each of them did within the time limited for that purpose by the said act, surrender themselves to the acting commissioners named and authorized in or by the said commission of bankrupt so awarded against them and the said G. Sharpe the elder, and that these defendants and each of them did in all things conform as in and by the said act is directed: And these defendants do aver that the said cause of action or suit in the said complainant's bill set up against these defendants and each of them, did accrue before such time as these defendants respectively became bankrupt; And therefore these defendants severally crave the benefit of the said act and plead the same in bar to the relief and discovery (except as before excepted) so sought against them respectively by the said bill of complaint, and pray the judgment of this honorable court whether they or either of them shall be compelled to make any other or further answer to the said complainant's said bill of complaint, save only as to the part thereof above excepted out of this their plea; And these defendants not in any sort waiving their said plea, do for answer to such said excepted point or question put to them in the said bill of complaint and not covered by their said plea, or to so much of such question as they are advised is material or necessary for them to make answer unto, say that by a certain deed-poll under the hands and seals of these defendants and the said late G. Sharpe

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[ \*645 ]

the elder deceased, dated the 26th day of July 1813, these defendants and the said late G. Sharpe the elder, in consideration of 5s. paid them respectively by the assignees of their estate, released to the said assignees all surplus allowance right title interest benefit \*claim and demand which these defendants and the said G. Sharpe the elder deceased or any or either of them could or might have claim challenge or demand in to or out of their estate, or against the said assignees personally in respect thereof both at law and in equity ; And therefore in case these defendants ever had claimed or pretended to have or claim any interest in the matters in question in this suit, such claim and interest would as they are advised be now extinguished or transferred wholly to their said assignees ; And these defendants further severally say they do not know or believe that since their said bankruptcy they or either of them have had claimed or pretended to have or claim, any interest in the matters in question in this cause, and they do respectively disclaim all right title and interest therein and in every part thereof.

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\*VI. *Plea of a fine and non-claim to a bill for an account and for a discovery of the defendant's title, accompanied by an answer to part of the bill.*(8)

The plea and answer of Dame Mary Every, Daniel Parker Coke, William Hoskins, and John Fowler, to the bill of complaint of Allen Butler complainant.

These defendants by protestation, &c. [*see form No. I. p. 640,*] as to so much of the said bill as seeks to compel them to set forth an account of the rents and profits of the messuages farms lands tenements and hereditaments in the said bill mentioned or any part thereof, late the estate of Sir John Every bart. the intestate in the said bill named, and of which Sir Edward Every obtained the actual possession as hereinafter mentioned, and as to so much of the said bill as prays that possession of such messuage, &c. may be delivered

(8) This is a correct copy of the plea (as amended) allowed by Lord Chancellor Thurlow in *Butler v. Every*, 1 Ves. jun. 136, 2d edit., 3 Bro. Ch. Ca. 80, 81, S. C. It is inserted in the 5th volume of "The property Lawyer," p. 126, (from a MS. in the possession of the editors of that work) in a note to a case of *Leigh v. Leigh*, where all the cases will be found collected. A similar plea in *Dobson v. Leadbeater*, 13 Ves. 230, was overruled; an averment of actual seisin being necessary, the words "*being thereby seised,*" being argumentative. See further *Ld. Red. Tr. Pl. p. 253*, 4th edit.; *Beames on Pleas*, p. 183.

In *Leigh v. Leigh*, cited *supra*, the plea stated that the defendant at the time of levying the fine *was seised in possession*, it was objected that such averment was not equivalent to stating that he was seised of an estate of *freehold*; Sir A. Hart, V. C. considered the plea as sufficient in point of form; (it was however overruled upon the ground that a fine cannot be pleaded to a bill filed merely to prevent a satisfied term being set up on ejectment.)

up to the said complainant, or that any title-deeds or writings relating thereto may be delivered up to him, or that an account may be taken of any rents or profits of the said messuages, &c. or that these defendants or any of them may pay to the said complainant any sums of money on account of such rents and profits, or that \*the said complainant may have any other relief touching such messuages, &c., and as to so much of the said bill as seeks to discover in what manner or by what pedigree the said Sir Edward Every is the heir at law of the said Sir John Every these defendants do plead in bar, and for plea say that after the death of the said Sir John Every baronet, which happened about June 1779, Edward Every afterwards Sir Edward Every, baronet, in the said bill named, *entered* upon the said messuages farms lands tenements and hereditaments hereinafter particularly mentioned, *claiming the same as heir at law* of the said Sir John Every, and was in the *actual possession* thereof and in the receipt of the rents and profits thereof; and that the said Sir Edward Every *being thereby seised* and in the actual possession of all and singular the messuages farms lands tenements and hereditaments aforesaid, in Michaelmas Term in the 20th year of the reign of his present Majesty, *a fine sur conuzance de droit come ceo qu'il a de son done* was levied in due form of law before the justices of the court of Common Pleas at Westminster, between Daniel Parker Coke, esq. demandant, and the said Sir Edward Every baronet deforciant, of all the said messuages farms lands tenements and hereditaments, by the description of the manors of Eggington, Newton Solney otherwise Newton Soolney, and Hardwick, with the appurtenances, and of sixty messuages, thirty cottages, ninety gardens, fifty orchards, one thousand acres of lands, six hundred acres of meadow, one thousand acres of pasture, one thousand five hundred acres of wood, six hundred acres of furze and heath, two hundred acres of moor, common of pasture for all cattle, free fishing in the waters of Trent and Dove, courts leet, court baron, and view of frankpledge, and whatsoever to view of frankpledge belongeth, with the appurtenances in Eggington, Newton Solney otherwise Newton Soolney, Hardwick, and Ripton, and also of the rectories of Hardwick and Newton Solney, with the appurtenances, and likewise of all and all manner of tithes whatsoever yearly arising, growing or renewing in Eggington, Newton Soolney, and Hardwick aforesaid, and moreover of the advowson of the churches of Newton Solney and Eggington, upon which fine proclamations were duly made according to the form of the statute in that case made and provided, and the last proclamation thereon was duly made in Trinity Term in the 20th year of the reign of his present Majesty, as by such fine and the proclamations thereupon made and remaining of record in the said court of Common Pleas may more fully appear; And these defendants for plea further severally say that the said estates hereinbefore particularly mentioned, and of which such fine was levied by the said Sir Edward Every as aforesaid, and such proclamations thereupon made, are all the messuages farms lands tenements or hereditaments of which the said Sir John died seised of any estate of inheritance either in fee-simple or otherwise: And these defendants for plea further severally say that the said Sir

[ \*647 ] Edward Every before and after the levying of such fine, and until his death, and after the death of the said Sir Edward Every these defendants Daniel Parker Coke, Abraham Hoskins, and John Fowler, claiming under him, have been and now are in the peaceable possession of the said messuages and premises and every part thereof \*without any lawful entry thereon or on any part thereof by the said complainant or any person whomsoever within five years after the proclamation so last made as aforesaid or at any time since, and without any suit at law or in equity touching or concerning the same messuages and premises or any part thereof prosecuted by the said complainant within five years after proclamation so last made as aforesaid until the filing of the said complainant's bill; And these defendants do aver that the said complainant was not at the time of such fine levied and proclamation thereupon made as aforesaid or at any time afterwards under any legal disability whatsoever; And these defendants do aver that the right of the said complainant, if any he ever had in the said messuages and premises or any part thereof, accrued before the levying of such fine and five years and upwards before the filing of the said bill; All which matters and things these defendants do plead in bar to so much of the complainant's bill as aforesaid, and do pray the judgment of this honorable court whether they ought to be compelled to make any further or other answer thereto; And as to so much and such parts of the said bill as they these defendants have not pleaded unto, they these defendants in no sort waiving the benefit of their said plea but wholly relying and insisting thereon, these defendants for answer thereto say they admit it to be true that Sir John Every bart. above mentioned was in his life-time and at his death seised or well entitled in fee-simple in possession of and to the several estates above mentioned, and that being so seised or entitled he the said Sir John Every died about the time in the said bill of complaint set forth a widower intestate and without issue; but they these defendants deny that to their knowledge or belief the said Sir John Every died without leaving any heir at law of the male line or on the part of his father, on the contrary they these defendants say that they believe that, &c.

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\*VII. *Plea by an heir at law that he had no lands by descent, accompanied by an answer admitting that he is heir at law.*

The plea of, &c.

This defendant by protestation, &c. [see form No. I. p. 640,] as to so much of the said bill as seeks any relief from or any discovery from him (save and except whether he is the heir at law of J. C. deceased in the bill named) this defendant doth plead in bar thereto; And for and by way of plea saith that he hath not nor hath any person or persons in trust for him, nor on the day of filing the bill nor at any time before or since had any lands tenements or here-

ditaments by descent coming from the said J. C. deceased this defendant's father; And this defendant not waiving his said plea but wholly relying and insisting thereon for answer to the residue of the said complainant's bill not hereinbefore pleaded unto, or to so much \*thereof as this defendant is advised is material or necessary for him to make answer unto, saith he admits he is the heir at law of the said J. C. deceased.

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\*VIII. *Plea to an ejectment bill negating the averment in the bill as to there being outstanding leases.*(9)

The plea of, &c.

These defendants respectively by protestation, &c. [see form No. I. p. 640,] for plea to the said bill say and aver that James Armitage in the said bill named was at the time of his death seised in fee in possession of all the real estates whereof or whereto he was then seised or entitled; And these defendants do aver that none of the said real estates of the said James Armitage were or was let on lease by the said James Armitage to any person or persons for any terms or term of years which were or was unexpired at the time of the death of the said James Armitage; All which matters, &c.

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\*IX. *Plea by several defendants that the plaintiffs are not next of kin, and averring that one of the defendants only sustains that character.*(10)

The joint and several plea of the  
Right Honorable W. Lord B. and  
R. H. and F. his wife defendants  
to the bill of complaint of J. J.,  
D. J. and S. J. complainants.

These defendants by protestation not confessing or acknowledging all or any of the matters and things in the said complainant's said bill of complaint contained to be true in such manner and form as the same are therein and thereby set forth and alleged, do plead in bar to the said bill, and for plea say that the said complainants were not nor were any nor was either of them the next of kin of the testator W. J. in the said complainant's bill named at the time of his death, nor are the said complainants nor is either of them now the next of kin of the said testator; For these defendants

(9) See *Armitage v. Wadsworth*, 1 Madd. Rep. 189; the Vice-Chancellor held that the bill would have been demurrable but for the statement of outstanding leases, and that as the plea negated the existence of such leases, it was good, and did not stand in need of any averment by answer. See also *Ld. Red. Tr. Pl.* p. 222, 4th edit.

(10) See *Ld. Red. Tr. Pl.* p. 230; *Beames on Pleas*, 121, 128.

[ \*649 ] severally for plea say they have been informed and believe it to be \*true that H. J. of — was the grandfather of the said testator, and that he had nine children who all died before the said testator W. J. and only two of such children left issue living at the time of the death of the said testator, viz. Esther J. and Ann J. ; And these defendants for plea further severally say they have been informed and believe that R. J. who was one of the nine children of the said H. J. of Erdington had only one child the said testator W. J. who survived his father ; And that the said Esther J. died in the life-time of the said testator having intermarried with W. H. by whom she had issue one child only, namely, Susannah, who also died in the life-time of the said testator having married R. L. esq. by whom she had issue only two children viz. the defendant W. Lord B., and E. L. who died in the life-time of the said testator ; And that the said Ann J. died in the life-time of the said testator having intermarried with Sir C. F. by whom she had only one child, viz. Mary, who died in the life-time of the said testator having intermarried with the Right Honorable H. Earl of A. deceased, by whom she had six children, who all died in the life-time of the said testator except one, viz. Lady Mary who married W. H. commonly called Lord Viscount A. which said Lady Mary Viscountess A. was living at the time of the death of the said testator, and has since died ; And these defendants do aver that this defendant W. Lord B. and the said Lady Mary H. commonly called Viscountess A. deceased were at the time of the death of the said testator his only next of kin, and that this defendant W. Lord B. is now his only next of kin ; And these defendants severally say and aver that the said complainants were not nor are nor is any or either of them now the next of kin of the said testator, and do plead the same in bar to the said complainant's bill, and humbly pray the judgment of this honorable court whether they shall be compelled to make any further or other answer thereto ; And these defendants pray to be hence dismissed with their reasonable costs in this behalf sustained.

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\*X. *Plea of two outlawries, with the certificates thereof annexed.*(11)

The plea of, &c.

[ \*650 ] This defendant by protestation not confessing, &c. [*see form No. I. p. 640,*] and for plea saith that the said complainant now is \*and standeth a person outlawed, and is thereby disabled by the laws of

(11) This plea was considered to be a perfect plea of the outlawries, but was held to be defective for want of judicial evidence of the outlawries ; the error having arisen by the mistake of the clerk of the outlawries, the Vice-Chancellor allowed the defendant to withdraw the plea and to amend it by annexing an office copy of the existing or record of the outlawry ; *Waters v. Mayhew*, 1 Sim. & Stu. 220.

A plea of outlawry may be filed after an attachment has issued ; *Waters v. Chambers*, 1 Sim. & Stu. 225. See further Ld. Red. Tr. Pl. p. 226 ; Beames on Pleas, p. 17, 100.

this realm to sue or commence any action or actions suit or suits in this honorable court or any other court until the said outlawry be reversed by due course of law; For this defendant saith that on Monday next after the Feast of St. John in the second year of the reign of his present Majesty King George the Fourth the said complainant by the name of Edmund Waters late of the Haymarket in the county of Middlesex esq. was outlawed in an action of trespass on the case for 300*l.* at the suit of R. Hill (as by the said outlawry *sub pede sigilli* hereunto annexed appeareth;) And further that on Monday next after the Feast of All Saints in the second year of the reign of his present Majesty King George the Fourth the said complainant by the name of Edmund Waters late of London esq. was outlawed in an action of trespass on the case for 200*l.* at the suit of Joseph Cooper, Joseph Watson, Thomas Osborne Stock and Ford Wilson (as by the said last-mentioned outlawry *sub pede sigilli* hereunto also annexed appeareth,) both of which said outlawries do yet stand and remain in full force and unreversed; And this defendant doth aver that the said Edmund Waters the complainant named in the said bill of complaint, and the said Edmund Waters named in the certificates of the said outlawries *sub pede sigilli* hereunto annexed, is one and the same person and not divers and several, and therefore this defendant doth humbly demand the judgment of this honorable court whether or not he shall be compelled to make any other or further answer to the said complainant's bill of complaint until the said complainant shall have reversed each and every of the said outlawries, and thereby become a person of ability and capable to exhibit a bill of complaint against this defendant, and in the mean time this defendant prays to be hence dismissed with his reasonable costs in this behalf sustained.

The following certificates were annexed to the plea:

“London, June 1821.

“Edmund Waters late of the Haymarket in the county of Middlesex esquire outlawed in London on Monday next after the Feast of St. John before the latin Gate in the 2d year of the reign of King George the 4th, at the suit of R<sup>d</sup> Hill.

“R. Hill (L. s.)

Case 300*l.*

“Examined, John Young, deputy clerk of the outlawries.”

“London, Nov. 1821.

“Edmund Waters late of London esquire outlawed at the Hustings of Common Pleas held at Guildhall in and for the city of London on Monday next after the Feast of All Saints in the 2d year of his present Majesty King George the 4th.

“At the suit of Joseph Cooper, Joseph Watson, Thomas Osborne  
“Stock, and Ford Wilson.

“Beavan (L. s.)

Case 200*l.*

“Examined, W. Haines, clerk of the outlawry.”

*\*XI. Plea of the statute of frauds to a bill for specific performance of a parol agreement, accompanied by an answer to the matters stated in the bill tending to show a part performance;—with a note of the Lord Chancellor's decision on overruling the plea.*(12)

This defendant by protestation, &c. [see form No. I. p. 640,] to so much of the said bill as seeks to compel this defendant specifically to perform the agreement in the said bill mentioned to have been made and entered into between the said complainant and this defendant for sale by this defendant unto the said complainant of a certain messuage or tenement in the said bill mentioned, or as seeks to compel this defendant to execute a conveyance of such messuage or tenement unto the complainant pursuant to any such agreement, or as seeks any other relief relating to such messuage or tenement, or as seeks any discovery from this defendant of or concerning any agreement made or entered into between the complainant and this defendant for sale by this defendant unto the said complainant of the said messuage or tenement and not reduced into writing and signed by this defendant or some person by him this defendant lawfully authorized, this defendant doth plead in bar, and for plea saith that by an act of parliament made in the twenty-ninth year of his Majesty King Charles the Second, intituled, “An act for prevention of frauds and perjuries,”(13) it was amongst other things enacted, that from and after the 24th day of June 1677 no action should be brought whereby to charge any person upon any contract or sale of lands tenements or hereditaments, or any interests in or concerning them, unless the agreement upon which such action should be brought, or some memorandum or note thereof should be in writing and signed by the party to be charged therewith or some other person thereunto by him lawfully authorized; As by the said act may appear; And this defendant further for plea saith that neither he this defendant nor any person by him lawfully authorized, did ever sign any contract or agreement in writing for making or executing any sale or conveyance to the complainant of the said messuage or tenement or any part thereof or any interest therein or to any such effect, or any memorandum or note in writing of any such agreement; All which matters and things this defendant doth aver to be true, and is ready to prove as this honorable court shall award; And therefore he doth plead the same in bar to so much and such parts of the said bill as aforesaid, and humbly prays the judgment of this honorable court whether he shall be compelled to make any further or other answer to so much and such parts of the said bill as is herein and hereby pleaded unto as aforesaid; And this defendant not waiving his said plea, but wholly relying and insisting thereon, and in aid and support thereof, for answer to the residue of the complainant's bill not hereinbefore pleaded unto or to so much thereof as he

[ \*652 ] this \*defendant is advised is in anywise material or necessary for him

(12) See Lord Red. Tr. Pl. p. 265, 7, and p. 299, 4th edit.; Beames on Pleas, 171, 6.

(13) C. 3, s. 4.



to make answer unto, he answering saith that he this defendant was in the month of — and now is seised in fee-simple of the messuage or tenement in the bill mentioned, together with the household goods and stock upon the premises, and that the same then were and now are in his possession or occupation in the manner therein set forth; And this defendant also admits it to be true that this defendant was in the said month of — last desirous to sell the said messuage or tenement and the furniture and stock in and about the same, and that the complainant being by trade a brewer and maltster was then desirous of purchasing the same, and that a treaty was in the said month of — had between the said complainant and this defendant for the sale thereof by this defendant to the said complainant; And this defendant further answering saith that while the said complainant and this defendant were treating or conversing together as to this defendant selling to the said complainant the said messuage or tenement, the said complainant asked this defendant's opinion whether S. W. who is named in the said bill was not a fit person to take or become tenant of the said premises, and this defendant having answered that he this defendant knew nothing to the contrary, the said complainant then desired that if this defendant should see the said S. W. this defendant would send him to the said complainant, and the said complainant at or about the same time asked this defendant at what yearly rent the said messuage or tenement was rated in the parish books; and this defendant having answered that the said messuage or tenement was in such books rated at the yearly rent of —*l.*, the complainant further asked this defendant whether the same would bear rising for that the same was well worth —*l.* a year, or conversation to such or the like effect then passed between the said complainant and this defendant to the best of this defendant's remembrance and belief; but this defendant also saith that this defendant's declaring that the said messuage or tenement was worth —*l.* a year proceeded from his speaking in a hurry or by surprise and without consideration, the said messuage or tenement being really worth to be let much more than —*l.* a year; And this defendant further saith that this defendant having seen the said S. W. shortly after the aforesaid conversation with the said complainant, he this defendant informed the said S. W. that the said complainant wanted to see him the said S. W. for the purpose of treating with the said S. W. for letting unto the said S. W. the said messuage or tenement, or to such or the like effect; And this defendant hath been since informed and believes that the said S. W. did very soon afterwards go to the said complainant, and that after some short treaty was had between them for the complainant's letting the said messuage or tenement to the said S. W. they the said S. W. and the said complainant executed a writing bearing date the — day of — last and signed by them, whereby it was declared that in case he the said complainant should on or before — then next purchase the said messuage or tenement from B. for which he was then in treaty with him, that he would then give a lease thereof to the said S. W. at the rent of —*l.* per annum, although this defendant for greater certainty as to the date and material contents of such writ-

ing \*craves leave to refer thereto, now in this defendant's custody or power, the same having been obtained from the said S. W. by a relation of this defendant's, and by him delivered to this defendant; but this defendant saith he doth not know or believe that the said complainant in writing or otherwise entered into any absolute agreement or any other agreement than as aforesaid for letting the said messuage or tenement unto the said S. W.; And this defendant also saith that to the best of his this defendant's remembrance and belief he this defendant did not at any time further or otherwise than as aforesaid communicate with the said S. W. for letting the said messuage or tenement unto him, or executing any lease thereof unto him, nor was further or otherwise than as aforesaid privy to the execution or signing of the same agreement dated the — day of — last by the said complainant or the said S. W. or either of them, or to the making of any agreement between them for the complainant's letting the said messuage or tenement unto the said S. W. before or at the time of the executing signing or making thereof or until some time afterwards; And this defendant is advised and humbly apprehends that according to the terms of the said writing dated the — day of — last the said complainant cannot be answerable to the said S. W. or liable to make any satisfaction to him for or on account of his not executing a lease of the said messuage or tenement to the said S. W. or not letting the same to him in case the said complainant should not be able to purchase the same from this defendant; And this defendant absolutely insists that the said written agreement dated the — day of — is now void and of no effect, as the said complainant was not become the purchaser of the said messuage or tenement by — now last past; And this defendant further saith he believes that the sum of — £. in money and in annuity of — £. for the life of this defendant were not in the said month of — last near a full and valuable consideration for the purchase of the freehold and inheritance of the said messuage or tenement. [*And denies combination.*]

W. A.

*Observation.*—The answer takes no notice of the charge that the defendant delivered the deeds to the attorney for the purpose of examining the title in preparing the conveyance; and that therefore in arguing the plea that charge must be admitted to be true; there was nothing in the instructions concerning that charge.

The bill and facts stated in the answer were laid before A. and S. separately, they both advised the plaintiff to plead the statute of frauds.

The Lord Chancellor, Hilary Term, overruled the plea in this cause, but ordered it to stand for an answer, with liberty to except and saving to the defendants the benefit of the statute. At the hearing he considered the bill in the same light as if it had stated merely a parol agreement; for the matters contained in the bill tending to show a special performance of the agreement were so frivolous they might as well have been left out. Considering the bill in that point of view, he thought the plea a bad one; because it went to the discovery of that which if the court could be satisfied \*of the truth of by any other means but by evidence, they would decree per-

formance of the agreement. He was therefore of opinion that the plea should be supported by an answer denying the fact of the agreement, and seemed to think that where the defendant pleads the statute of frauds and by his answer admits the agreement, the answer overrules the plea, and the court would decree execution. He also observed that where a bill stated an agreement without mentioning it to be in writing a demurrer would be the proper mode of pleading according to the general rules of and principles of demurrers, because it appears on the face of the bill that the plaintiff has not made out such a case as entitles him to relief; but he added that the usual course was to plead the statute to such a bill, and that the practice had obtained by analogy to the courts of law, where if the declaration stated an agreement without mentioning it to be in writing, it was always usual to plead the statute in bar to it.

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XII. *Plea of the statute of frauds in bar to so much of a bill as sought to compel the specific performance of a parol agreement for a lease.*

The plea of, &c.

This defendant by protestation, &c. [*see form No. I. p. 640,*] as to so much of the said bill as seeks to compel this defendant or any person or persons claiming under him to execute a lease in writing of the several lands and tenements in the said bill mentioned or of any of them or of any part thereof pursuant to the pretended agreement in the bill mentioned, and as to any relief thereby prayed touching such lease and agreement, this defendant doth plead in bar, and for plea saith that by an act of parliament made in the twenty-ninth year of the reign of his late Majesty King Charles the Second, intituled "An act for the prevention of frauds and perjuries;" it is amongst other things enacted, that from and after the 24th day of June 1677, no action shall be brought whereby to charge any person upon any contract of lands' tenements or hereditaments or any interest in or concerning them, unless the agreement upon which such action shall be brought or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith, or some other person thereunto lawfully authorized; As by the said act may appear; and this defendant avers that neither he this defendant nor any person by him lawfully authorized, did ever make or sign any contract or agreement in writing for making or executing any lease to the said complainant of the same premises or any of them or of any part or parcel thereof or to any such effect as by the said bill is suggested, or any memorandum or note in writing of any agreement whatsoever for or concerning the demising or leasing or making or executing any lease of the said premises or any of them or any part or parcel thereof to the complainant; And therefore this \*defendant doth plead the said act of parliament and the matters

aforesaid in bar to so much and such part of the said bill as seeks to compel this defendant or any person or persons claiming under him to execute a lease to the complainant of the several lands and tenements in the bill mentioned or any of them or any part or parcel thereof pursuant to the said pretended agreement and as to any the relief thereby prayed touching such lease and agreement, and humbly prays the judgment of this honorable court whether he shall be compelled to make any further or other answer, &c.

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XIII. *Plea of the statute of limitations to a bill by an administratrix for account.*

The plea of, &c.

This defendant by protestation, &c. [*see form No. I. p. 640,*] to all the discovery and relief in and by the said bill sought from or prayed against this defendant, other than and except such parts of the said bill as seeks a discovery of or concerning the age of T. N. P. in the said bill named, or a discovery whether the said T. N. P. out of respect or affection for the said T. P. his father did not forbear or was not unwilling to take or use any compulsory measures for obtaining a settlement of the accounts of the matters in the said bill mentioned, this defendant doth plead in bar, and for plea saith that by an act of parliament made and passed in the 21st year of King James the the First intituled, "An act for limitation of actions and for avoiding suits at law," it was enacted, &c. [*stating the act*]; (14) And this defendant for further plea saith that if the said complainant either in her own right or as administratrix of the said S. N. deceased, or as administratrix of the said personal estate of R. N. deceased in said bill named or otherwise ever had any cause of action or suit against this defendant or against the said T. P. this defendant's testator for or concerning any of the matters in the aforesaid bill of complaint mentioned which this defendant doth in no sort admit, such cause of action or suit did accrue or arise above six years before the filing of the complainant's bill of complaint, and above six years before serving or suing out process against this defendant to appear to and answer the same bill; and the said T. N. P. was not at any time within upwards of six years before the filing of the complainant's bill, or within upwards of six years before the serving or suing out process against this defendant to appear to and answer the said bill, nor hath the complainant at any time since the death of said T. N. P. been under any of the disabilities mentioned and described in the said act of parliament; And this defendant for further plea saith that neither

[ \*656 ] he this defendant nor to \*his knowledge or belief the said T. P. deceased this defendant's testator did at any time within six years before

(14) C. 16, s. 3; and see Ld. Red. Tr. Pl. p. 269; Beames on Pleas, p. 161, and note (4), ib.; 15 Ves. 198; 18 Ves. 286; 19 Ves. 185.

exhibiting the said bill or serving or suing out process against this defendant to appear to and answer the same, promise or agree to come to any account for or to pay or any ways satisfy the said complainant any sum or sums of money for or by reason of any matters transactions or things in the complainant's said bill of complaint charged or alleged ; All which matters and things this defendant doth aver to be true, and is ready and willing to maintain and prove as this honorable court shall award ; and he doth plead the same in bar to the whole of the said bill except such parts as aforesaid, and doth humbly demand the judgment of this honorable court whether he this defendant ought to be compelled to make any further or other answer to such parts of the said bill as he hath pleaded unto ; and this defendant not waiving or relinquishing their said plea, &c. [as in p. 644,] he this defendant answereth and saith he believes that the said T. N. P. attained his age of twenty-one years in or about — ; and this defendant doth not know or believe that the said T. N. P. for any time whatsoever, forebore or was unwilling out of respect or affection for the said T. P. his father to take or use any compulsory measures for obtaining any settlement of the accounts in the bill mentioned : Without that &c.

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*\*XIV. Plea of the statute of limitations to so much of a bill as sought a discovery of title-deeds, and of the defendant's title to the estates in question, supported by averments showing an uninterrupted possession for sixty years and upwards in the defendant and the party through whom he claimed, accompanied by an answer to so much of the bill as required a discovery of the time when the party through whom the plaintiff claimed was seised of the estate.(15)*

The plea of T. L. defendant, to part,  
and his answer to the residue of the  
bill of M. B. complainant.

This defendant by protestation, &c. [see form No. I. p. 640,] as to so much of the said bill as seeks to have any discovery from this defendant of all or any or either of the deeds writings evidences conveyances and assurances in this defendant's custody knowledge or power, touching or concerning the manor rectory lands tenements grounds and hereditaments in the said bill mentioned or the right or title thereof, or as seeks a discovery of what estate right title or interest this defendant hath in or to the said premises in the said bill mentioned, this defendant doth plead thereto, and for plea saith that by an act of parliament made in the 21st year of the reign of \*King James the First, intituled, " An act for limitation of actions and for avoiding suits at law, " it was enacted that no person or persons

[ \*657 ]

(15) See Ld. Red. Tr. Pl. p. 258, 271 ; Beames on Pleas, 161, and p. 331, where a form of plea of forty years possession without account is to be found.

should at any time thereafter make any entry into any lands tenements or hereditaments, but within twenty years next after their right or title should first descend or accrue to the same ; And in default thereof such persons so not entering and their heirs should be utterly excluded and disabled from such entry after to be made ;(16) And this defendant doth aver that J. J. in the said bill named, and under whom the said complainant claims title to the said premises or any other person for his use or in trust for him, was not at any time within the space of twenty years next before his the said J. J.'s death in the possession or in the receipt of the rents or other profits of the manor rectory lands tenements grounds and hereditaments and other the premises mentioned in the said complainant's bill or any part thereof ; And this defendant doth likewise aver that the said J. J. at his death left E. J. his brother and heir at law ; And that the said E. J. or any person for his use or in trust for him was not in his life-time and after the death of the said J. J. in the possession or in receipt of the rents or other profits of the same premises or any part thereof ; And this defendant doth likewise aver that the said complainant or any person under whom he claims or any other persons or person for his or their or any of their use or in trust for him or them or any of them, were not nor was after the death of the said E. J. to the time of filing the said complainant's bill in the possession or in the receipt of the rents and other profits of the same premises or any part thereof ; And this defendant doth also aver that the said complainant or any person under whom he claims or any other person or persons for his or their or any of their use or in trust for him or them or any of them was not nor were within twenty years next before the filing of the said complainant's bill in the possession or in the receipt of the rents or other profits of the same premises or any part thereof ; And this defendant doth aver that E. B. the grandfather of this defendant's wife was in the year 1762 for the space of fifty years and upwards then last past in the continual peaceable and uninterrupted possession and enjoyment by himself and his tenants of the said manor rectory lands tenements grounds and hereditaments and every part thereof, and continued so to be until this defendant entered thereupon in the said year 1762, in which year this defendant entered upon the said premises ; And he this defendant from that time to the time of filing the said complainant's bill [1770] was in the continual peaceable and uninterrupted possession and enjoyment thereof by himself and his tenants, and is now in the actual possession and receipt of the rents and profits thereof ; And this defendant doth plead the said act of parliament and such possession and enjoyment as aforesaid to so much of the said bill as is hereinbefore pleaded to ; And this defendant humbly prays the judgment of this honorable court whether he ought to make any further answer to so much of the said bill as is hereinbefore pleaded to ; And this defendant

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\*not waiving his said plea but wholly relying and insisting thereon, for answer to the residue of the said bill or so much thereof as this defendant is advised is material or necessary for him to make answer

unto, answereth and saith he believes it to be true that J. J. in the said bill named was in or before the year 1670 and not since that year seised or well entitled to him and his heirs in fee-simple in possession of in and to the manor and rectory of B., and divers lands tenements grounds and hereditaments thereunto belonging and therewith held and enjoyed by the said J. J. and his ancestors as their family estate situate and being at B. in the county of —: Without that, &c.

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*\*XV. Plea of a former suit depending for the same matters in bar to a bill for account.*(17)

The joint and several plea of R. H. and G. H. defendants to the bill of complaint of R. S. and P. D. executors of the last will and testament of J. P. deceased, on behalf of themselves and all other the creditors of G. S. deceased, complainants.

These defendants by protestation, &c. [*see form No. I. p. 640,*] do plead in bar to the said bill, and for cause of plea severally say that the said complainants together with R. C. since deceased did in or as of Michaelmas Term 1802 exhibit in this honorable court their bill of complaint which was afterwards amended against J. S. and these defendants and G. S. now deceased, J. C. now deceased, and N. N. now deceased, thereby praying amongst other things that &c. [*stating the prayer*]; And these defendants for plea severally further say that they put in their joint and separate answer to the said amended bill, and which suit is now depending in this honorable court; And these defendants do aver that the said bill now exhibited against these defendants by the said complainants is for the same matters as the amended bill before exhibited by the said complainants and the said R. C. deceased against these defendants and the said J. S. and the said G. S., J. C. and N. N. now respectively deceased, to which these defendants have appeared and answered, and which suit is still depending and undetermined; and therefore these defendants do plead the said former bill and answer in bar to the said complainant's now bill, and humbly \*pray the judgment of this honorable court whether they shall be compelled to make any further or other answer thereto; And these defendants pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

[ \*659 ]

(17) See *Ld. Red. Tr. Pl. 246, 7, 4th edit.*; *Beames on Pleas, p. 134, 6, and p. 330* where a form of a similar plea is to be found; *Crofts v. Wortly, 1 Ch. Ca. 241*; *Foster v. Vassal, 3 Atk. 587*; *Ullin v. Hudson, 1 Vern. 331*; *Devie v. Lord Brownlow, 2 Dick. 611.*

*\*XVI. Plea of another will in bar to a bill by a devisee for redemption.*(18)

The plea of, &c.

This defendant by protestation, &c. [*see form No. I. p. 640,*] and for plea saith that the will and testament in writing of R. M. in the said bill named bearing date on or about the 27th day of October, 1807, and by which it is in the said bill stated that the said R. M. did thereby give and devise all the estate in the said bill mentioned called M. together with the slaves and all the chattels implements and other property thereupon unto the said complainant and this defendant, to hold the same unto the said complainant and this defendant their heirs and assigns as tenants in common and not as joint-tenants, and by which it is also stated in the said bill that the said testator did give devise and bequeath all the rest and residue of his real and personal estate of what nature or kind soever and where-soever situate unto the said complainant and this defendant as tenants in common absolutely and forever, and under which will the said complainant claims, was not the last will and testament of the said R. M. for this defendant saith that the said R. M. duly made and published another will, which was his last will and testament in writing, bearing date 15th April. 1808, and that such will was executed by him and attested as by law is required for passing real estates, and is in the words and figures following (that is to say) “This is the last will and testament of me R. M. late of, &c. but now of, &c. gent. I direct,” &c. [*stating the will verbatim, and also the attestation clause.*] And this defendant doth aver that the estate devised by the said last mentioned will to this defendant and her heirs is the same estate of which the said complainant seeks an account of the rents and profits, and which he seeks to redeem by his said bill; And this defendant therefore avers that the said complainant hath not any title to or interest in the rents and profits of the said estate in his said bill mentioned, nor in the equity of redemption thereof, or the title-deeds papers or writings relating thereto; All which matters this defendant doth plead in bar to the said bill, and to the discovery and relief sought thereby, and humbly demands the judgment of this court whether she shall be compelled to make any further or other answer to the said bill, and she prays to be hence dismissed with her reasonable costs in this behalf most wrongfully sustained.

(18) See *Ld. Red. Tr. Pl.* p. 263; *Beames on Pleas*, 248; 2 *Ves. & B.* 261.



\*CHAPTER XII.

REPLICATIONS.

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\*I. *A general replication to a defendant's answer.*(1)

The replication of A. B. Complainant to the answer of C. D. Defendant.

This repliant saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith that he will aver and prove his said bill to be true certain and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain untrue and insufficient to be replied unto by this repliant; Without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided traversed or denied is true; All which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

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\*II. *A special replication to the answers of several defendants.*(2)

The replication of John Marshall complainant to the several answers of Holdsworth Newman, John Baring, William Newman, and Richard Newman, defendants to the said complainant's original and amended bill.

This repliant saving to himself all and all manner of advantage of \*exception to the manifold insufficiencies of the said answers, for and by way of replication saith that his said original and amended bill of complaint exhibited into this court against the said defendants and all and every the matters, &c. therein contained are true certain and

[ \*661 ]

(1) A replication is the plaintiff's answer or reply to the defendant's plea or answer. Formerly if the defendant by his plea or answer offered new matter, the plaintiff replied specially, the consequence of which was a rejoinder by the defendant, but special replications are now out of use; if however a plaintiff is disposed to controvert a part of the case made by the defendant's answer, and to admit the rest, he may still put in a replication so far special that it is confined to the particular matter controverted, instead of being a general denial of the truth of the whole answer, and then the defendant is put only to proof of the matter replied to. *Ld. Red. Tr. Pl.* p. 321, 2, 4th ed.

(2) This and the preceding form are taken from *Hide's Chancery Pr.* 285, 6.  
A special replication is always signed by counsel.

sufficient in the law to be answered unto by the said defendants, and that the answers of the said defendants are untrue uncertain and insufficient in the law to be replied unto by this repliant, save and except that this repliant doth admit it to be true as in the said answers some or one of them is by the said defendants some or one of them alleged, that the mortgage in the said original and amended bill mentioned to be made by Philip Marshall deceased to Richard Newman and Robert Newman deceased and therein respectively named, and bearing date the 2d day of June 1754, was made and entered into between them of and concerning and comprehended all the said Philip Marshall's then plantations and meadows in Newfoundland and in the said original and amended bill and the said defendants' said answers respectively mentioned, and that the same plantations and meadows were or are all situate and being in St. John's Newfoundland aforesaid in the said bill also mentioned; and this repliant doth moreover admit it to be true as in the said answers of the said defendants some or one of them is alleged, that on or about the 2d day of October 1775, the said Philip Marshall did settle an account with an agent of or for the said Richard Newman then deceased and in the said bill named, or of or for his executors, of and concerning all and every sum and sums of money therefor due and owing from the said Philip Marshall to the said Richard Newman and Robert Newman or either of them their or either of their executors or administrators, and did by an agreement of that date in writing under his hand and seal admit, and this repliant doth now hereby admit and acknowledge, that on the said 2d day of October 1755, there was due and owing from the said Philip Marshall on the said security of all the said plantations and premises, and on the balance of such accounts the full sum of 577*l.* 3*s.* in the said answers or some or one of them mentioned and claimed as the then balance of such accounts and payable with interest; Without that, that there is any other matter or thing in the said defendants' said answers contained material or effectual for this repliant to reply unto, and not herein and hereby well and sufficiently replied unto confessed and avoided traversed or denied is true; All which matters and things (save and except as aforesaid) this repliant is ready to aver and prove as this court shall award, and prays as in and by his said original and amended bill he hath prayed.

JOHN HEATH.

## \*CHAPTER XIII.

## EXAMINATIONS.

\*I. *Form of examination of a defendant in the Master's office upon interrogatories settled by a Master pursuant to a decree.*

In Chancery.

Between A. B. . . . Complainant,  
and  
C. D. . . . Defendant.

The answer and examination of the said defendant C. D. to interrogatories exhibited on behalf of the said complainant A. B. for the examination of the said defendant before Sir J. S. bart. one of the Masters of this court to whom this cause stands referred, pursuant to the decree made on the hearing of this cause dated —.

To the first interrogatory this examinant saith that, &c.

\*II. *Examination of executors in the Master's office, referring to [ \*663 ]  
schedules annexed.*(1)

In Chancery.

Between, &c. [*naming all the parties, plaintiffs and defendants.*]

The examination of the said complainants J. W. and A. G. the executors of S. P. deceased in the pleadings in this cause named, upon interrogatories exhibited by the said defendants before J. W. esq. one of the Masters of this honorable court pursuant to the decree made on the hearing of this cause bearing date the — day of —.

1st.—To the first interrogatory these examiners say that shortly after the decease of S. P. the testator in the pleadings in this cause

(1) In stating accounts, if a defendant has set forth in the schedule all the receipts and payments down to the time of filing his answer, he must in his examination state only the subsequent receipts and payments, and carry on the account from the foot of his answer to the time of putting in his examination; for although the interrogatories extend to a wide sweeping inquiry into all receipts and payments, a repetition of those comprised in the schedule to the answer might subject the examination to a reference for impertinence; so on the other hand a defective account to a

named which happened on or about the 3d day of December which was in the year of our Lord —, these examinants employed T. N. then a licensed appraiser and auctioneer in the city of Bristol but now deceased, to take an inventory and make an appraisal, and the said T. N. did as these defendants believe take an inventory and make an appraisal, of all the household goods and furniture linen and other personal estate and effects of the said testator then being in and about his dwelling-house, situate in, &c. (other than and except such parts thereof as consisted of chattel interests in houses or lands, and money due on mortgages bonds and promissory notes, and also other than and except such parts of his said personal estate as were and are by the said testator in and by his said will and codicil specifically given bequeathed and disposed of,) and such household goods household furniture and linen so inventoried and appraised were afterwards sold and disposed of by public auction by the said T. N., and such inventory and appraisal so made and taken by the said T. N. is now in the custody or power of this examinant A. G., and these examinants crave leave to \*refer thereto; And these examinants say that they did not make any inventory or particular of the real estates or of the chattels real or securities of their said testator, but the same are nevertheless hereinafter in this their examination fully and particularly mentioned described and set forth according to the best of their knowledge and belief.

[ \*664 ]

2d.—To the second interrogatory these examinants say that the said S. P. the testator in the pleadings in this cause named was at the time of his death in manner hereinafter mentioned possessed of interested in or entitled unto a considerable personal estate consisting of leases for terms of years absolute and determinable with lives, and also of moneys due and owing to him upon mortgages bonds and promissory notes, rents and arrears of rent, and the several household goods and furniture contained and set forth in the said inventory and appraisal, but no cash to the knowledge or belief of these examinants; And these examinants say that in a schedule hereunto annexed entitled “The first schedule,” and which they pray may be taken as a part of this their examination and to which they crave leave to refer, they have according to the best of their knowledge remembrance information and belief, each speaking for himself, set forth a full true and particular account of all the goods chattels rights credits debts personal estate and effects whatsoever of or belonging to their said testator the said S. P. at the time of his death, with the several and respective natures species kinds sorts quantities qualities and true and utmost values thereof respectively,

Reference to  
the 1st Sched-  
ule;

reference for insufficiency; and if for the purposes of spleen it runs into scandal, it might be referred and expunged.

An examination is subject to all the infirmities of an answer; the admission should be so framed that the receipt and application *should be in the same sentence, forming one transaction*, and not distinct matters, and should be *uno flatu*, otherwise the admission would be evidence of the receipt, and the application must be proved by evidence; 1 Turn. Ch. Pr. p. 584, 6th ed.; *Blount v. Burrow*, 1 Ves. jun. 546; *Ridge-way v. Darwin*, 7 Ves. 404; *Thompson v. Lambe*, *ibid.* 587; *Robinson v. Scotney*, 19 Ves. 582.

Examinations do not require to be signed by counsel; *Bonus v. Flack*, 18 Ves. 287, 2d ed.; *Jac. Rep.* 224; and see *Keene v. Price*, 1 Sim. & Stu. 99.

distinguishing what part thereof consisted of chattels real from the said testator's other personal estate; And these examinants also say that their said testator was at the time of his death seised of a freehold estate consisting of two messuages or dwelling-houses coach-houses stables and other buildings situate in — aforesaid, but no other freehold estate to the knowledge or belief of these examinants; And these examinants in another schedule hereunto annexed entitled, "The second schedule," which they pray may be taken as a part of this their examination and to which they also crave leave to refer, have according to the best of their knowledge, information and belief set forth a true and particular account of the said freehold estates of the said testator and of the yearly value thereof and of all rents due and in arrear for such freehold estates at the time of their said testator's death; And in another schedule hereunto annexed entitled "The third schedule," which they pray may be taken as a part of this their examination and to which they also crave leave to refer, these examinants have set forth a true account of how much and what particular parts or part of the said testator's personal estate or of such rents and profits have or hath at any time or times and when been received got in or possessed by these examinants respectively, or by any person or persons and whom by their or either of their order or direction privity or consent, or for their or either of their use respectively, with the several and respective particulars and the value thereof, and how and when and by whom and for what use or purpose the same have been sold paid applied administered or disposed of, and how much and what part thereof doth now remain in the hands of these examinants \*and of each of them and what is become thereof; And these examinants also say that in the same schedule they have to the best of their knowledge information and belief set forth a true and particular account of what debts due and owing to their said testator's estate are now standing out and unreceived either wholly or in part and from whom the same are so respectively due and owing, and why the same have not been got in and received by them; And they have also in the same schedule set forth an abstract or list and short account of all securities now in their hands custody or power and of all debts due and owing to their said testator's estate.

Reference to  
the 2d Sche-  
dule;

Reference to  
the 3d Sche-  
dule;

[ \*665 ]

3d.—To the third interrogatory these examinants say that the said S. P. was at the time of his death indebted unto several persons in divers sums of money to a considerable amount; And these examinants have in another schedule hereunto annexed entitled "The fourth schedule," which they also pray may be taken as part of this their examination and to which they crave leave to refer, set forth according to the best of their respective knowledge and belief and so far as they are able, a full true and particular account of all sums of money paid by these examinants in discharge of debts due and owing from their said testator at the time of his death, and to whom such debts were due, and for what and when and by whom such debts were paid or satisfied respectively; And these examinants believe that all such sums of money so paid as aforesaid were really due and owing from their said testator at the time of his death, and that nothing

Reference to  
the 4th Sche-  
dule;

now remains due for or on account of any debts or debt of their said testator, so far as such debts have come to their knowledge respectively: And these examinants say that they have also paid or expended divers large and considerable sums of money for or on account of the said testator's funeral expenses and for the probate of his will, and other expenses relating to his affairs; and these examinants have in the last mentioned schedule set forth an account of such sum or sums of money as they have so respectively paid on the accounts aforesaid, and also the times when and the persons to whom the same have been so paid, or how the same have been expended; And these examinants verily believe that no further sum or sums of money now remain due or owing to any person or persons in respect of the debts or funeral expenses of the said testator or otherwise on account of his estate, except the cost and charges of these examinants as executors as aforesaid, and particularly the costs of the suit.

[ \*666 ] \*\*III. *Examination of femes covert entitled to shares of money in a cause; with the certificate of the commissioners and affidavit of the attesting witness.*

Between, &c. [naming all the parties,  
plaintiffs and defendants.]

The examination of the plaintiffs Hannah D.  
and Mary G., in pursuance of an order  
made in this cause bearing date the —— day  
of —— 1786.

Whereas it is ordered by the said order of the —— day of —— last that the plaintiff Hannah the wife of the plaintiff R. D. who resides at ——, and the plaintiff Mary the wife of the plaintiff I. G., who resides at ——, should respectively attend E. B. of, &c. esq. the Rev. W. L. of, &c. the Rev. J. Q. of, &c. and H. D. of, &c. or any two of them, and the said plaintiff Hannah D. was to be solely and secretly examined by them separate and apart from her said husband, how and in what manner and to what uses she was willing and desirous the third part of the sum of 575*l.* 10*s.* 5*d.* cash in the bank in the said order mentioned should be paid and applied, and the said plaintiff Mary G. was also to be solely and secretly examined by them separate and apart from her said husband, how and in what manner and to what uses she was willing and desirous her third part of the said cash in the bank should be paid and applied, and the said E. B., W. L., J. Q. and H. D. or any two of them who should examine the said Hannah D. and Mary G. were to take their examinations respectively in writing, and the same were to be signed by them respectively, and the said E. B., W. L., J. Q., and H. D. or any two of them who should take such examinations were to certify the same in writing, and the signing of the said Hannah D. and Mary G. and such certificates were to be verified

by affidavit, and upon the return of such certificates such further order should be made as should be just: Now I the said plaintiff Hannah D. being solely and secretly examined by the said E. B. and H. D. separate and apart from the said plaintiff R. D. my husband, how and in what manner and to what uses I the said plaintiff Hannah D. am willing and desirous my third part of the said sum of 575*l.* 10*s.* 5*d.* cash in the bank in the said order mentioned should be paid and applied, I the said plaintiff Hannah D. do say and declare that I am willing and desirous that the sum of 191*l.* 16*s.* 10*d.* being my third part of the said sum of 575*l.* 10*s.* 5*d.* cash in the bank in the said order mentioned may and shall be paid to the said plaintiff R. D. my husband to and for his own use and benefit, and I the said plaintiff Hannah D. do hereby freely and voluntarily consent that the same may be paid to him accordingly; And I the said Mary G. being solely and secretly examined by the said E. B. and H. D. separate and apart from the said plaintiff J. G. \*my husband how and in what manner and to what uses I the said plaintiff Mary G. am willing and desirous my third part of the said sum of 575*l.* 10*s.* 5*d.* cash in the bank in the said order mentioned shall be paid and applied, I the said plaintiff Mary G. do say and declare that I am willing and desirous that the said sum of 192*l.* 16*s.* 10*d.* being my third part of the said sum of 575*l.* 10*s.* 5*d.* cash in the bank in the said order mentioned may and shall be paid to the said plaintiff J. G. my husband to and for his own use and benefit, and I the said Mary G. do hereby freely and voluntarily consent that the same may be paid to him accordingly; In witness whereof we the said plaintiff Hannah D. the wife of the plaintiff R. D. and the said plaintiff Mary G. the wife of the said plaintiff J. G. have hereunto signed our names respectively the — day of — 1786.

[ \*667 ]

HANNAH D.  
MARY G.

Witness WADE SMITH.

[*Endorsed.*]

(A)

This is the paper referred to by the affidavit of Wade Smith, sworn to by him this — day of — 1786, when the same paper-writing was produced and shown to the said deponent.

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COMMISSIONERS' CERTIFICATE.

Between, &c. [*naming all the parties.*]

To the Right Honorable, &c.

We E. B. of — esq. and H. D. of — gent. do hereby certify unto your lordship that pursuant to an order made by your lord-

ship in this cause bearing date the — day of — 1786, we have been attended by the plaintiff Hannah the wife of the plaintiff R. D. who resides at — and by the plaintiff Mary the wife of the said plaintiff J. G. who resides at — respectively, and we have in pursuance of the said order examined the said plaintiff Hannah D. solely and secretly separately and apart from the said plaintiff R. D. her husband, how and in what manner and to what uses she the said plaintiff Hannah D. was willing and desirous the third part of the sum of 575*l.* 10*s.* 5*d.* cash in the bank in the said order mentioned should be paid and applied, and we did at the same time read the said order to her and explain to her the purport and effect thereof. and we do certify unto your lordship that the said plaintiff Hannah D. did on such her examination say and declare she was willing and desirous that the sum of 191*l.* 16*s.* 10*d.* being her third part of the said sum of 575*l.* 10*s.* 5*d.* cash in the bank in the said order mentioned might and should be paid to the said plaintiff R. D. to and for his own use and benefit, \*and she did thereby freely and voluntarily consent that the same be paid to him accordingly; And we do further certify unto your lordship that we have in pursuance of the said order also examined the said plaintiff Mary G. solely and secretly separately and apart from the said plaintiff J. G. her husband, how and in what manner and to what uses she the said plaintiff Mary G. was willing and desirous her third part of the sum of 575*l.* 10*s.* 5*d.* cash in the bank in the said order mentioned should be paid and applied, and we did at the same time read the said order to her and explain to her the purport and effect thereof, and we do certify unto your lordship that the said plaintiff Mary G. did on such her examination say and declare she was willing and desirous that the sum of 191*l.* 16*s.* 10*d.* being her third part of the said sum of 575*l.* 10*s.* 5*d.* cash in the bank in the said order mentioned might and should be paid to the said plaintiff J. G. her husband to and for his own use and benefit, and she did thereby freely and voluntarily consent that the same be paid to him accordingly, and we took down such the examinations declarations and consents of the said Hannah D. and Mary G. in writing, and they thereupon signed the same respectively as thereby now appears. Witness our hands the — day of — 1786.

Witness WADE SMITH.

E. B.  
H. D.

[*Endorsed.*]

(B)

This is the paper-writing referred to by the affidavit of Wade Smith, sworn to by him this — day of — 1786, when the same paper-writing was produced and shown to the said deponent.



## AFFIDAVIT.

Between, &c. [*naming all the parties.*]

Wade Smith of —, gent. maketh oath and saith that he was present and did see Hannah D. wife of the plaintiff R. D. and Mary G. wife of the plaintiff J. G. respectively sign the examination declaration and consent being the paper-writing marked with the letter (A), and saith that he was also present and did see E. B. of —, esq. and H. D. of —, gent. sign the certificate marked with the letter (B), and that the names of Hannah D. and Mary G. now appearing set to the said examination declaration and consent as the names of the said Hannah D. and Mary G. and the names E. B. and H. D. now appearing set to the said certificate as the parties signing the same are of the respective proper hand-writing \*of the said Hannah D. and Mary G. and E. B. and H. D., and that the name "Wade Smith" now appearing set or subscribed to the said examination declaration and consent and also to the said certificate as a witness to the signing the same respectively, is and are respectively of the proper hand-writing of this deponent. [ \*669 ]

WADE SMITH.

Sworn, &c.

\*IV. *Examination of a feme covert upon a commission, as to her execution of a deed of settlement (under the 39th and 40th Geo. 3, c. 56,) of moneys to which she was entitled, subject to be laid out in lands in tail; with the certificate of the commissioners and affidavit of the attesting witness.*

In Chancery.

Between, &c. [*naming all the parties,  
plaintiffs and defendants.*]

I, D. W. the wife of the said J. G. W. do hereby declare that I freely and voluntarily executed the deed mentioned in the pleadings in this cause bearing date the 12th day of April 1783, and that I am well acquainted with the purport and effect thereof, and desire that the same may be carried into execution. Witness my hand this — day of — 1783.

Witness JOHN GIBBS.

D. W.

## COMMISSIONERS' CERTIFICATE.

Between, &c. [*naming all the parties.*]

To the Right Honorable, &c.

We whose names are hereunto subscribed do hereby certify to your lordship that pursuant to an order made in this cause bearing date the — day of — 1783, we attended the said D. W. the wife of the said J. G. W., and after having separately and apart from her said husband read to her the deed bearing date the 12th day of April 1783 in the said decree mentioned and explained to her the purport and effect thereof, we did examine her separately and apart from her said husband whether she had freely and voluntarily executed the said deed, and whether she was consenting that the same should be carried into execution, and on such examination the said D. W. did declare that she had executed the said deed freely and voluntarily, and was consenting and desirous that the same should be carried into execution, and that we took down such her \*examination or declaration in writing, and that she thereupon signed the same as the same now appears above written. Witness our hands this — day of — 1783.

[ \*670 ]

Witness JOHN GIBBS.

A. B.  
C. D.

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AFFIDAVIT.

Between, &c. [*naming all the parties.*]

John Gibbs of —, gent. maketh oath and saith that he was present and did see the said defendant D. W. the wife of the said defendant J. G. W. sign the examination or declaration above written, and that he was also present and did see the said A. B. and C. D. sign the certificate above written, and that the name D — W — now appearing set to the said examination or declaration, and the names A — B — and C — D — now appearing set to the said certificate as the parties signing the same respectively, are of the respective proper hands-writing of the said D. W. A. B. and C. D. and that the name John Gibbs now appearing set or subscribed to the said examination or declaration, and also to the said certificate as a witness to the signing the same respectively, is and are of the proper hand-writing of him this deponent.

JOHN GIBBS.

Sworn, &c.

\*V. *Examination of a person claiming an interest in the premises in the pleadings mentioned, who had petitioned to be examined upon an interrogatory pro interesse suo.*

In Chancery.

Between H. R. an infant, by John Miller his  
next friend . . . . . Plaintiff,  
and  
T. J. W., M. A. T., &c. &c. Defendants.

The answer and examination of G. R. of ———  
to a certain interrogatory exhibited before  
F. C. esq. one of the Masters of this honorable court for the examination of the said G. R. *pro interesse suo* in certain premises in the pleadings in this cause mentioned, pursuant to an order of this honorable court bearing date the ——— day of ——— made on the petition of the said G. R.

To the said interrogatory this examinant saith that by a certain  
\*indenture of lease bearing date, &c.; And this examinant further  
saith that by a certain indenture of assignment bearing date &c.; And  
this examinant further saith that the said T. J. W. being entitled to  
the said two-tenth parts or shares of and in the said last mentioned  
leasehold messuages or tenements and premises under and by virtue  
of the last two mentioned assignments did in and by a certain indenture  
of assignment bearing date on or about the ——— day of ———,  
for the considerations therein mentioned, grant bargain sell assign  
transfer and set over unto him this examinant all those two full and  
equal undivided tenth parts or shares (the whole into ten equal parts  
or shares to be divided) of and in all the said last-mentioned leasehold  
messuages or tenements and premises hereinbefore described, To hold  
the same unto this examinant his executors administators and assigns  
for all the rest residue and remainder then to come and unexpired of  
the said term of ——— years; And this examinant further saith that  
under and by virtue of the last will and testament of the said W. H.  
and the several assignments hereinbefore mentioned, he is entitled to  
eight-tenths of the said leasehold messuages or tenements and premises  
comprised in and demised by the said indenture of lease of the ———  
day of ———, for all the residue of the said term of ——— years thereby  
granted.

[ \*671 ]

## \*CHAPTER XIV.

EXCEPTIONS.<sup>c</sup>

## SECT. I.

## EXCEPTIONS TO ANSWERS.

\*I. *An exception to the answer of several defendants.*(1)

In Chancery.

Between W. W., J. W., and C. L. on behalf  
of themselves and all other the  
creditors of J. B. who shall come  
in and contribute to the expense  
of this suit, . . . Complainants,  
and  
J. G. and T. B., . . . Defendants.

An exception taken by the said complainants to  
the insufficient answer of the said defendants.

For that the said defendants have not to the best of their know-  
ledge remembrance information and belief, answered and set forth a

(1) Exceptions to an answer must state *verbatim* the interrogatories not answered; but if the defendant submits to answer the exceptions, it is too late to object to the form of them; *Hodgson v. Butterfield*, 2 Sim. & Stu. 236.

In preparing exceptions care should be taken that all the points of insufficiency are embodied in the exceptions; for by the general rule of practice, a plaintiff is not allowed to add to or alter exceptions after they are filed; but this rule bends to circumstances; upon a clear mistake accounted for, and on special application leave has been given to amend exceptions, *Dolder v. The Bank of England*, 10 Ves. 283; and see *Partridge v. Haycraft*, 11 Ves. 570; 1 Turn. Ch. Pr. 784. If the defendant puts in an insufficient answer to the exceptions, the answer must be referred back upon the old exceptions.

Where there are two or more defendants who put in separate and distinct answers, separate exceptions must be filed to each answer, *Sydney v. Monkston*, 2 Dick. 609; and where exceptions were taken to the joint answer of two defendants and one of them died, the exceptions were referred as to the answer of the surviving defendant only, *Lord Herbert v. Pusey*, 1 Dick. 255.

Upon exceptions taken to an answer for insufficiency, the Master may look to the materiality of them, and may overrule immaterial exceptions, *Agar v. Regent's Canal Company*, Coop. R. 123, 4.

Exceptions to an answer must be signed by counsel, *Candler v. Partington*, 6 Madd. 102; *Yates v. Hardy*, Jac. Rep. 224.

<sup>c</sup> The proper practice in exceptions seems to be, to state the charges in the bill, the interrogatory applicable thereto, to which the answer was addressed, and the terms of the answer *verbatim*. *Brooks v. Byam*, 1 Story, 296. The exceptions must be founded on some allegation, charge, or interrogatory in the bill, and must set forth the particular points wherein the answer is defective, with a prayer that the defendant may put in a full and perfect answer to those points; *Buloid v. Miller*, 4 Paige, C. R.

full just and true inventory and account of all and singular the goods and chattels personal estates and effects whatsoever which J. B. the

473; see *McKeen v. Field*, 4 Edw. Ch. 379; *West v. Williams*, 1 Md. Ch. Decis. 358; otherwise the exceptions may be struck off of the files, on motion, or the objection may be taken when the exceptions are noticed for argument. *Baker v. Kingsland*, 3 Edw. Ch. 138. The parts of the bill which are not answered, must be clearly pointed out. *Baker v. Kingsland*, 3 Edw. Ch. 138. An exception will not be allowed, if by striking out the portion objected to, other parts of the answer would be rendered unmeaning. *German v. Machin*, 6 Paige, C. R. 288. The exceptions must be taken before replication filed; *Coleman v. Lyne*, 4 Rand. 454; nor will they be allowed to be filed after the arguments on final hearing have begun; *Severns v. Hill*, 3 Bibb, 240; and where the rules of court limit a time for filing exceptions, they cannot after the expiration of that period be filed with effect, without express leave of the court upon motion heard. *Lawrence v. Hall*, 3 R. I. 150. Where an answer is accompanied by a plea or demurrer to any part of the discovery sought, the plaintiff, unless he means to admit the validity of the plea or demurrer, cannot except to the answer until the plea or demurrer has been disposed of; *Siffkin v. Manning*, 9 Paige, C. R. 222; and where a plea is ordered to stand for an answer, without any liberty to except being expressly given, the plaintiff can only except to the residue of the answer; *Kirby v. Taylor*, 6 Johns. C. R. 242; *Leaycraft v. Dempsey*, 15 Wend. 83; and it is said that exceptions will not lie to an answer in aid of a plea. *Leftwich v. Orne*, 1 Freem. Ch. 207. If exceptions to an answer are on account of the omission in a matter not material, and where it is evident that the defendant has no intention of avoiding a full disclosure, they will not be sustained. *Davis v. Mapes*, 2 Paige, C. R. 105; *Baggott v. Henry*, 1 Edw. Ch. 7; *Fay v. Jewett*, 2 Id. 323; *West v. Williams*, 1 Md. Ch. Decis. 358; 10 Humph. 280. The exceptions must be disposed of before further proceedings can be had in the cause. *Clark v. Tinsley*, 4 Rand. 250. If exceptions for insufficiency are sustained, and no further answer is put in, the complainant may disregard the answer and take the bill *pro confesso*. *Lea v. Vanbibber*, 6 Humph. 18; *Pegg v. Davis*, 2 Blackf. 281. If an answer to a bill of discovery is not strictly responsive, exception should be taken to it on the trial, and the tribunal which hears the cause, should exclude such parts of the answer as are not responsive. *Chambers v. Warren*, 13 Ill. 318. Where exceptions to an answer are allowed by a master, a single exception to the whole report, insisting upon the sufficiency of the answer generally, cannot be sustained, if any of the exceptions to the answer are well taken; *Candler v. Petit*, 1 Paige, C. R. 427; and where exceptions to a former answer, and amendments to the bill are answered together, and neither the amendments nor exceptions are fully answered, the plaintiff is at liberty to file new exceptions, founded only upon the new matter introduced into the bill by the amendments. The answers will then be referred upon the new exception, and of such of the old as were not sufficiently answered in the same order. *Bennington Iron Company v. Campbell*, 2 Paige, C. R. 169. Exceptions to an answer in equity, are a part of the pleadings in the case, and as such may be read to the jury. *Riggins v. Brown*, 11 Geo. 271. And where an answer has been referred on exceptions, if a second or other answer is referred on the old exceptions, the reference should be to the same master to whom the first was referred, if he remain in commission, and is competent to act in the case. *Leggett v. Dubois*, 3 Paige, C. R. 477. Where exceptions to an answer have been disallowed, on the ground that the interrogatory to which a further answer is required had no sufficient foundation in the charging part of the bill, the former exceptions cannot be referred upon the amendment of the bill, at least not without special leave of the court, and if the further answer is insufficient, new exceptions must be framed. *Van Wagener v. Murray*, 1 Edw. Ch. 319. Where the court on its own mere motion orders a master to report upon scandal or impertinence in an affidavit, written exceptions are unnecessary. *Powell v. Kane*, 2 Edw. Ch. 450. An exception to the answer of one of the defendants, because in stating what he had heard from another defendant he did not state whether he believed the same, was held to be too general in form. It should have stated the charges in the bill, the interrogatory applicable thereto, to which the answer was addressed, and the terms of the answer *verbatim*. *Brooks v. Byam*, 1 Story, 296.

The introduction of any matters into an answer or other pleading which are not properly before the court for decision, is impertinence, and may be objected to by the plaintiff; Story, Eq. Pl. § 266; *Langdon v. Goddard*, 3 Story, 13; *Conwell v. Claypool*, 8 Blackf. 124; *Spencer v. Van Dusen*, 1 Paige, C. R. 555; but any matter in the answer which is responsive to the bill, is not impertinent; *McIntyre v. Trustees of Union College*, 6 Paige, C. R. 239; and where an exception to an answer embraces matter

[ \*673 ] younger in the said bill named was possessed of entitled to or interested in at the time of the date of the indenture in the said bill \*mentioned, and all the particulars whereof the same consisted, and the quantities qualities full real and true values thereof and of every such particulars; And whether all or some and which of such particulars have not and when been possessed or received by or come to the hands of them the said defendants or the one and which of them, or some and what person or persons by their or either of their order or for their or either of their use, and how and in what manner and when and where and by and to whom and for how much the same and every or any and what part thereof hath been sold and disposed of; And whether any and what parts thereof and to what value or amount now remain undisposed of and what is become thereof.

In all which particulars the said complainants except to the answer of the said defendants as evasive imperfect and insufficient, and humbly pray that the said defendants may be compelled to put in full and sufficient answer thereto.

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*\*II. An exception taken to the answer of a defendant to an amended bill.(2)*

In the Exchequer.

Between A. B. . . . . Complainant,  
and  
C. D. . . . . Defendant.

An exception taken by the said complainant to the insufficient answer of the said defendant to the said complainant's amended bill of complaint.

For that the said defendant hath not to the best and utmost of his

(2) In *Williams v. Davies*, 1 Sim. & Stu. 426, where exceptions had been allowed

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material to the defence, it will be overruled. *Balcom v. New York Life Insurance and Trust Company*, 11 Paige, 454: see also, *Hardeman v. Harris*, 7 How. U. S. 726; *Saltmarsh v. Bower*, 22 Ala. 221. Exceptions for impertinence or scandal must point out the objectionable passages with clearness; and if several parts of an answer are objectionable, each part must be the subject of a separate exception; *Whitmarsh v. Campbell*, 1 Paige, C. R. 645; and where a whole clause or sentence is impertinent, and depends upon the same principle, the plaintiff cannot except to a part of the clause or sentence only, so as to make what remains unintelligible, or so as to wholly change the meaning of what remains, should the part excepted to be stricken out; *Franklin v. Keeler*, 4 Paige, C. R. 382; *Buloid v. Miller*, Ib. 473; but when pertinent matter is so blended with matter which is impertinent that it cannot be separated, the whole may be excepted to. *Norton v. Woods*, 5 Paige, C. R. 260. An exception however, for impertinence, must be sustained *in toto*. *McIntyre v. Trustees of Union College*, 6 Paige, C. R. 239; *Van Rensselaer v. Brice*, 4 Id. 174.

knowledge remembrance information and belief, set forth the documents by which the modus or composition in the said defendant's former answer alleged and insisted upon is made out.

In which particular the said complainant excepts to the answer of the said defendant as evasive imperfect and insufficient, and humbly prays that the said defendant may be compelled to put in a full and sufficient answer thereto.

*\*\*III. Several exceptions taken to a defendant's answer.*

[ \*674 ]

In Chancery.

Between J. R. . . . . Complainant,  
and  
J. F. and C. R. . . Defendants.

Exceptions taken by the said complainant to the insufficient answer of the said defendant C. R. to the said complainant's bill of complaint.

1st.—For that the said defendant C. R. hath not to the best and utmost of his knowledge remembrance information and belief answered and set forth whether at the time when the reversionary interest of the said C. R. in the said bill mentioned was put up for sale as therein mentioned, the Reverend J. F. R. in the said bill named the father of the said complainant, did not and without the knowledge of the said complainant request T. C. in the said bill named to attend or procure some person to attend the said sale and purchase the reversionary interest for him the said J. F. R., nor whether the said T. C. did not request J. G. in the said bill named to attend such sale and to purchase the reversionary interest of the said C. R. in the estate in the said bill mentioned for the said J. F. R. as therein mentioned nor whether the said J. G. did not accordingly attend such sale, nor whether he did not become the purchaser of the said reversionary interest for the said J. F. R. at the sum of 100*l.* or at some other and what sum of money.

2d.—For that the said defendant hath not in any manner aforesaid answered and set forth whether in consequence of such purchase the said J. F. R. did not give instructions to his then solicitor for preparing the necessary conveyance of the said reversionary interest in the said estate and premises, and for suffering a recovery and making

to an answer, and the bill having been amended the defendant put in a second answer, upon exceptions taken to the second answer, entitled, "Exceptions taken by the said complainant to the further answer put in by the said defendant Lewis Davies to the original bill of complaint, and his answer to the amended bill of complaint filed by the said complainant in this cause, they were held to be irregularly entitled, and were ordered to be taken off the file, because no new exceptions could be taken to the further answer, but if considered insufficient, it should have been referred back to the Master upon the old exceptions.

a complete settlement thereof according to the recommendation of Mr. W. his counsel in the said bill named.

3d.—For that the said defendant hath not in manner aforesaid answered and set forth whether the necessary drafts of such deeds were not accordingly prepared by the said Mr. W. for that purpose, nor whether before such deeds were executed the said J. F. R. did not change his mind respecting the same, and give directions to have fit and proper deeds prepared for conveying the said estate and premises to the said complainant for the said complainant's own benefit nor whether the same was not so made accordingly.

4th.—For that the said defendant hath not in manner aforesaid answered and set forth whether the said J. F. R. did not himself pay the said sum of 100*l.* out of his own proper moneys as the purchase-money of the said estate.

[ \*675 ] 5th.—For that the said defendant hath not in manner aforesaid answered and set forth whether under the circumstances in the said \*bill stated, the said complainant was or can be considered as a purchaser himself of the reversionary interest aforesaid of the said estate and premises and why, nor whether the said complainant was in fact the purchaser thereof, nor whether he did ever and when advance and pay the purchase-money or any part thereof out of his own proper moneys, nor whether the said J. F. R. was not the actual purchaser thereof in the manner and under the circumstances in the said bill stated, and if not why not.

6th.—For that the said defendant hath not in manner aforesaid answered and set forth whether the reversionary interest in the said estate so purchased by the said J. F. R. was not a free gift from him to the said complainant and for his advancement in life, and if not why not; nor whether the said C. R. did not well know thereof at the time of the execution of the aforesaid conveyance to the said complainant, nor whether he did not fully concur and approve thereof, nor whether all or some and which of the rest of the creditors who had proved debts under the said commission did not also fully concur and approve of the same.

7th.—For that the said defendant hath not in manner aforesaid answered and set forth whether the sale of the reversionary interest aforesaid to the said J. F. R. did not take place in the month of June —, or at some other and what time, nor whether the conveyance to the said complainant did not take place in the month of January —, or at some other and what time.

8th.—For that the said defendant hath not in manner aforesaid answered and set forth whether upon the death of his father the said J. F. R. in the month of March — or at some other and what time the said complainant did not enter into possession of the said estate under and by virtue of the said conveyance, nor whether he hath not ever since been in the undisturbed possession thereof without any claim being made by or on the part of the said C. R., or the validity of the transactions and conveyance in the said bill stated being questioned by him.

9th.—For that the said defendant hath not in manner aforesaid answered and set forth whether under all the circumstances in the



said bill stated the said C. R. hath any and what claim upon the said estate and premises, nor whether he is entitled to question the validity of the said complainant's title to the said estate, nor whether the said complainant at any time and when executed any declaration of trust of the said estate and premises or any part thereof to or in favor of him the said C. R.

In all which particulars the said complainant excepts to the answer of the said defendant C. R. as evasive imperfect and insufficient, and humbly prays that the said defendant C. R. may be compelled to put in a full and sufficient answer thereto.

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\*SECT. II.

[ \*676 ]

EXCEPTIONS TO REPORTS.(1)

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\*I. *Exceptions to a Master's report relating to co-partnership accounts.*(2)

In Chancery.

Between T. J. Briggs . . . Complainant,  
and  
J. Smith, Mark Briggs, &c. [*inserting  
all the names*] . . . Defendants,  
by original and amended bill.  
And between, &c. &c. [*stating the names of  
the parties,*]  
by supplemental bill.

Exceptions (\*) taken by the said M. B. one of the defendants in the said original and amended bill and supplemental bill named, (†) to the report of J. S. H. esq. one of the Masters of the High Court of Chancery to whom the said

(1) In what cases it becomes necessary to take *objections* to the draft of the Master's report as a foundation for exceptions, see 2 Madd. Ch. Pr. 508; 2 Turn. Ch. Pr. 224, 6th edit.

Where one general exception is taken to the Master's report including several distinct matters, and the report appears right in any one instance, the exception must be overruled; *Hodges v. Solomans*, 1 Cox, 249.

(2) Where objections have been previously taken to the draft of the report, and any one of the exceptions assign matter not comprised in the objection upon which it is intended to be grounded, that exception will be irregular, and as it should seem must be overruled; 2 Turn. Ch. Pr. 224.

As the matter of exception must, if not literally, at least in substance, be founded upon the objections to the draft of the report, the following notes marked (\*) and (†), will sufficiently point out to the student the frame of the objections on which the above exceptions were founded:

\* Objections taken by the said M. B., &c.

† In framing objections insert these words: "to the draft of the report of," &c.,

causes stand referred, made in pursuance of the decree made on the hearing of the said causes bearing date the — day of —.

[ \*677 ] 1st *Exception*.—For that the said Master hath in and by his said report certified that he has charged this defendant, &c. &c. Whereas \*the said Master ought to have certified that he found this defendant had expended the further sum of, &c.

2d *Exception*.—For that the said Master hath in and by his said report certified that he found that all moneys, &c.

3d *Exception*.—For that the said Master hath in and by his report certified that he finds that the several balances and sums thereinbefore stated are the clear profits of such co-partnerships respectively as in the said report mentioned, except as to the sums thereinbefore mentioned to be unaccounted for by this defendant, and as to them he was unable to ascertain the clear profits of the said co-partnerships for the reasons expressed; Whereas the said Master ought to have certified that the several sums of money stated by this defendant in his examination to have been the profits made by this defendant on, &c. &c.

Wherefore the said M. B. excepts to the said Master's report, and humbly appeals therefrom to the judgment of this honorable court.

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\*II. *Exceptions to a Master's general report taken on the ground of the allowances made to the defendant an executor, in the accounts subjoined to the report by way of schedule.*(3)

In Chancery.

Between Ann Freeman, &c., . . . Complainants,  
and  
W. Fairlie . . . Defendant.

Exceptions taken by the said complainants to the general report of — one of the Masters of the High Court of Chancery to whom the said cause stands referred, made in pursuance of the decree made on the hearing of the said cause bearing date the 3d day of February 1816.

1st *Exception*.—For that the said Master hath in and by his

"to be made in pursuance of," &c. And in the statements of the several causes of objection, instead of the words "hath in and by his said report certified," insert these words, "hath in and by the said draft of his report stated that," &c. And instead of "ought to have certified," &c., insert "ought to have stated that," &c. And conclude thus: "Wherefore the said M. B. objects to the said draft of the said Master's report, and prays that he will re-consider and alter the same." Or thus: "In all which particulars the said defendant M. B. submits that the draft of the said report ought to be varied and rectified."

(3) These exceptions were allowed; see *Freeman v. Fairlie*, 3 Mer. 24.

said general report and the second schedule to which it refers allowed to the said defendant by way of discharge various sums of money amounting together to 1835 sicca rupees or thereabouts being equal to the sum of 229*l.* sterling or thereabouts, by way of commission at the rate of 5*l.* per. cent. on principal and interest moneys received by the said defendant on account of the personal estate of his testatrix in the pleadings named; Whereas the complainants submit the \*said sums of money by way of commission or any of them ought not to have been allowed to the said defendant in respect of such his receipts, he the said defendant being an executor, and his testatrix having by a codicil to her will desired her executors would each accept 500 sicca rupees as some small acknowledgment for the trouble they would necessarily have in the execution of the trusts reposed in them.

[ \*678 ]

2d *Exception*.—For that the said Master hath in and by his said general report and the second schedule to which it refers allowed to the said defendant by way of discharge various other sums of money amounting together to 2768 sicca rupees or thereabouts, being equal to 346*l.* sterling or thereabouts, by way of commissions at the rate of 5*l.* per cent. on sums annually credited by the said defendant in his account as executor for interest from time to time in his hands, and with which interest he is charged in the first schedule to the said report; Whereas the complainants submit the said defendant is not entitled to and ought not to have been allowed such last-mentioned commission for the following (among other) reasons:—*First*, Because the sums credited for interest were not in fact received by the said defendant and invested as part of the personal estate of the said testatrix, but were (as appears by the two examinations of the said defendant) together with the aforesaid principal moneys mixed with the funds of the different mercantile houses in which the said defendant was and is a partner and used in their business of merchants; And *secondly*, Because by virtue of the said decree the said Master is directed to inquire what interest and profit has been made by the said defendant of the personal estate of the said testatrix, and what balance he had from time to time in his hands belonging thereto, and that therefore the complainants are advised the said Master is not at liberty to make to the said defendant any allowance or abatement from the interest admitted by the said defendant to have been made by him, or with which he has submitted to be charged.

Wherefore, &amp;c.

*\*\*III. Exceptions to a Master's report in favor of a title depending on the validity of a recovery.*(4)

In Chancery.

Between Christopher Shapland, Complainant,  
and  
Jane Smith, . . Defendant.

Exceptions taken by the said defendant to the report of J. E. esq. one of the Masters of the High Court of Chancery to whom this cause stands referred by the decree made therein on the 18th day of May 1778, whereby it was referred to him to see whether the plaintiff can make a good title to the estate in question to the defendant, and which report bears date the 27th day of November in the year 1799.

1st *Exception*.—For that the said Master has by his said report certified that he was of opinion that the plaintiff, together with the trustees and mortgagees, may make a proper conveyance by lease and release to the purchaser (under a good title) in fee, and that the term of fifty years therein mentioned, under the settlement of 1731 in the said report mentioned, the term of ninety years therein mentioned in the deed of September 1770 in the said report mentioned, and the term of one thousand years in the said report mentioned to have been created the 21st of April 1772, must be assigned to a trustee for the purchaser to attend the inheritance; Whereas the said defendant apprehends that the said Master ought to have certified that a good title could not be made by the plaintiff to the said defendant for the reasons following: *First*, For that it appears by the abstract left by the said complainant with the said Master, that by the indentures of lease and release of the 15th and 16th days of August 1781 therein mentioned the estates in question were conveyed from and after the death of C. S. and Mary his then intended wife therein named, to trustees in moieties for the term of fifty years in each moiety, in trust for raising 10,000*l.* for the younger children of the said marriage as the said C. S. should by his will direct; and it appeared to the said Master that there were two younger children of the said marriage, viz. C. S. and R. S.; But it has not been made to appear before the said Master that the said two several terms of fifty years have been assigned to attend the inheritance, nor in whom the same are now vested; And *Secondly*, For that it appears by the said abstract that J. S. who by the abstract is stated to be seised in fee of the lands in question, by his will dated the 21st of June 1770 devised the same to trustees to hold to them their heirs and assigns forever, upon trust and to and  
[ \*680 ] \*for the uses intents and purposes thereafter mentioned; viz. in the

(4) See *Shapland v. Smith*, 1 Bro. Ch. Ca. by Belt, p. 74; 2 Turn. Ch. Pr. 137.

words following: "Upon trust that they the said J. B., J. S. and G. S. and their heirs and assigns shall yearly and every year by equal quarterly payments by and out of the rents and profits of the said premises after deducting rates taxes repairs expenses and outgoings, pay such clear sum as shall then remain unto my brother C. S. and his assigns for and during the term of his natural life; And from and after his decease, To the use and behoof of the heirs male of the body of the said C. S. lawfully to be begotten as they and every of them shall be in priority of birth; And in default of such issue, I give and devise the same unto C. S. son of the said G. S. for his life, and after his decease unto the said J. B., G. S. the elder, and J. S. and their heirs upon trust to support the contingent remainders from being defeated; And after their decease, To the use and behoof of the right heirs of the body of the said C. S. lawfully begotten; And in default of such issue, I give and devise the same unto his brother G. S. and the heirs male of his body lawfully issuing; And in default of such issue, To J. S. his brother and the heirs male of his body lawfully begotten; And in default of such issue, To his brother G. S. and the heirs male of his body lawfully begotten; And in default of such issue, to the right heirs of the said J. S. forever;" And the said defendant therefore humbly submits to the judgment of this honorable court whether by virtue of such will the legal estate of and in the premises did not become vested in the said trustees, and whether the said C. S. the son took any greater interest in the lands than for his natural life and to his first and other sons in tail, and whether therefore the recovery in the said abstract mentioned to have been suffered by the said C. S. in Michaelmas Term 1770 is not void, and whether J. S. the son of the said C. S., (which J. S. is now living but not a party to the suit mentioned in the report) hath not now as the first son of the marriage an estate tail in the said land; And *Thirdly*, For that it appears by the said abstract that by indenture dated the 5th day of October 1775 the said C. S. and E. his wife declared the uses of a fine levied by them in Trinity Term then last of the estates in question to and for the confirmation of certain indentures of lease and release of the 13th and 14th days of July then last, whereby after reciting various mortgages, he conveyed the estates in question to trustees and their heirs in trust to be sold; and for securing the payment of several sums of money therein mentioned, and also for securing a farther sum of 900*l.*, and for raising 6000*l.* upon trusts intended to be mentioned in an indenture of the 6th of October 1775, whereby the said C. S. in consideration of his marriage and of his wife's portion of 6000*l.* and in consideration that he had previously to his said marriage agreed to settle on her in case she survived him and on her children a competent provision, and in consideration that she had acknowledged the said fine, and of the love which he bore to his wife and children, and in performance of the said agreement, did give grant and appoint unto trustees therein named the sum of 6000*l.* (parcel of the surplus money for which he had contracted to sell the estates to the plaintiff,) Upon trust that after the 6000*l.* should be raised by the said trustees, they \*should place the same out at interest and pay the same to the said

[ \*681 ]

C. S. for his life, and after his decease to the said E. S. for her life, and after her decease, Upon trust to pay and divide the said £6000 to and among their then children, and to and among such other children as they should have, in manner therein mentioned ; but as it is not declared by the said indenture that the receipt of the trustees should be a sufficient discharge for the payment of the said sum of £6000, and it has not been made appear before the Master what the agreement was which is recited in the said deed to have been made previously to the said marriage for making a provision for the wife and children, and neither the trustees for sale of the said estates nor the children of the said marriage are parties to the suit, therefore the said defendant humbly submits whether any proper discharge can be given for the said sum of £6000 (part of the purchase-money), and whether the purchaser can therefore safely pay the said purchase-money.

2d *Exception*.—For that as the said Master hath certified that the plaintiff together with the trustees and mortgagees may make a proper conveyance by lease and release to the purchaser under a good title in fee, and it appears by the abstract brought in before the said Master that there are various mortgages and incumbrances upon the estates in question in this cause, and none of such mortgages or deeds have been brought in or produced before the said Master, and therefore it did not appear to the said Master, nor is it stated by the said report what incumbrances there are upon the said estates, nor who are the necessary parties to make a legal conveyance thereof, supposing the said C. S. took an estate tail in the lands in question and legally barred the same and all the remainders over, therefore the said defendant humbly insists that the said Master ought either to have stated by his said report that the said C. S. could not alone make a good title to the estate in question, or should have set forth particularly who by name are necessary parties to make a legal conveyance thereof.

Wherefore the said defendant doth except to the said Master's said report, and appeals therefrom to the judgment of this honorable court.

**\*\*IV.** *General exception to a Master's certificate of insufficiency, under an order of reference to look into the plaintiff's bill and the defendant's answer and the exceptions thereto, and to certify whether the answer be sufficient in the points excepted to or not (the defendant not submitting to answer the exceptions).*(5)

In Chancery.

Between J. S. and A. his wife, . . . Plaintiffs,  
and  
G. B. and others, . . . Defendants.

An exception taken by the said defendant G. B. to the report of Sir J. S. bart. one of the Masters of this court to whom the said cause stands referred, bearing date the 15th day of November 1822.

For that the said Master hath in and by his said report certified that the answer of the said defendant G. B. is insufficient in all the points excepted unto; Whereas the said Master ought to have disallowed all and every the exceptions taken by the said complainants to the said answer of the said G. B., and to have reported that the said answer is insufficient in all the points excepted unto by the said complainant.

In all which particulars the said defendant G. B. excepts to the said Master's said report.

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**\*V.** *Exceptions to a Master's report of insufficiency, after a second answer put in by the defendant.*

In Chancery.

Between J. S. and A. his wife, . . . Plaintiffs,  
and  
G. B. and others, . . . Defendants.

Exceptions taken by the said defendant G. B. to the report of P. H. esq., one of the Masters of this honorable court, made in this cause and dated the 14th day of March 1803.

**1st Exception.**—For that the said Master hath in and by his said report certified that the said defendant's first and second answers put into the said complainant's bill are insufficient as to part of the 10th exception taken by the said complainants to the said defendant's

(5) See 1 Turn. Ch. Pr. 788, 9, 6th edit.

\*said answers, and the said Master hath thereby certified that the said defendant hath not answered and set forth according to the best of his knowledge remembrance information and belief, for whose benefit and on whose account the trade in the pleadings in this cause and in the said report mentioned hath been carried on from time to time since the same ceased to be carried on for the benefit or on the account of the persons interested in the estate of A. G. in the said report named, or the income thereof; Whereas the said Master ought not to have so certified.

2d *Exception*.—For that the said Master hath in and by his said report certified that the said defendant's said answer is insufficient in the 12th and 13th exceptions throughout, which the said Master ought not to have done.

3d *Exception*.—For that the said Master in and by his said report hath certified that the said defendant's said answer is insufficient in part of the 17th exception taken thereto by the said complainants; Whereas the said Master ought not to have so certified.

4th *Exception*.—For that the said Master hath in and by his said report certified that the said defendant's said answer is insufficient as to the 19th, 20th, 21st, 22d, 23d, 27th, 28th and 29th exceptions throughout; Whereas the Master ought not to have so certified.

In all which said particulars the said defendant G. B. doth except to the said Master's said report, and humbly appeals therefrom to the judgment of this honorable court.

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\*VI. *Exceptions to a Master's certificate of insufficiency, under an order of reference to certify whether an examination of a creditor going in under the decree in a creditor's suit, to interrogatories settled by the Master, is sufficient or not.*(6)

In Chancery.

Between A. P. and another, . . . . Plaintiffs,  
and  
Ann D. widow, . . . . Defendant.

An exception taken by C. C. who claims to be admitted a bond-creditor of P. D. to the report of F. P. S. esq. one of the Masters of this court dated the 10th March 1810.

[ \*684 ] For that the said Master hath in and by his said report certified \*that the answer and examination of the said C. C. to interrogatories settled by the said Master for the examination of the said

(6) See *Stanyford v. Tudor*, 2 Dick. 548; *Paxton v. Douglass*, 16 Ves. 239, 244; 2 Turn. Ch. Pr. 152, and the note *ibid*.



C. C. is insufficient; Whereas the said master ought to have certified that the said answer and examination is sufficient.

In all which particulars, &c.

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\*CHAPTER XV.

[ \*685 ]

INTERROGATORIES.

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SECT. I.

FORMS OF TITLES, AND OF THE FIRST AND LAST GENERAL INTERROGATORIES.

In Chancery.

Interrogatories to be administered to witnesses to be produced sworn and examined in a certain cause now depending and at issue in his Majesty's High Court of Chancery at Westminster, wherein W. C. is complainant and M. W. is defendant, on the part of the said complainant.

1. Title of interrogatories, *in Chancery*, for examination of witnesses in chief on the part of the plaintiff.

In Chancery.

Interrogatories to be administered to witnesses to be produced sworn and examined in a certain cause now pending and at issue in his Majesty's High Court of Chancery at Westminster, wherein by original and amended bill J. H., C. H., &c., &c., C. H. and A. H. infants under the age of twenty-one years, by the said L. H. their father and next friend, C. V., &c. &c., are plaintiffs, and T. R. B., and D. his wife T. W. B., &c. and E. B. and H. B. infants under the age of twenty-one years, by the said T. R. B. their guardian, are defendants; and wherein by supplemental bill J. H., C. H., &c., &c., are plaintiffs, and T. R. B. and D. his wife, &c., &c., are defendants on the part of all the said defendants except the said defendants J. J. and G. V.

2. Title of interrogatories *in Chancery*, for examination of witnesses in chief on the part of some of several defendants.

In Chancery.

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Between A. B. . . . Complainant,  
and  
C. D. . . . Defendant.

Interrogatories to be exhibited for the examination \*of witnesses on the part and behalf of the said com- 3. Title of in- [ \*686 ]

terrogatories,  
in *Chancery*,  
for examina-  
tion of witnes-  
ses on the part  
of the plaintiff  
pursuant to a  
decree. In *Chancery*.

plainant, to be produced sworn and examined pur-  
suant to the decree made on the hearing of the said  
cause bearing date —.

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Between A. B. and C. D. . . Complainants,  
and  
E. F. and G. H. . . Defendants.

4. Title of in-  
terrogatories  
in *Chancery*,  
for examina-  
tion of credi-  
tors and their  
witnesses pur-  
suant to a de-  
cree.

Interrogatories to be exhibited by the said complain-  
ants before W. G. esq. one of the Masters of this  
honorable court, for the examination of the creditors  
of T. H. esq. deceased in the pleadings in this cause  
named and of their witnesses, in pursuance of the de-  
cree or decretal order of this court made on the hear-  
ing of this cause bearing date —.

5. Title in  
*Chancery*, in  
the case of a  
contempt for  
signing a  
councillor's  
name to a bill without his authority. In *Chancery*.

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Interrogatories to be administered to L. M. solicitor  
to the bill filed in his Majesty's High Court of Chan-  
cery on behalf of A. B. against C. D.

6. Title of in-  
terrogatories,  
in *Chancery*,  
for examina-  
tion of a per-  
son *de bene*  
*esse*, pursuant  
to an order  
made in a  
cause. In *Chancery*.

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Interrogatories to be exhibited to D. G. of —, for  
the examination of the said D. G. *de bene esse* in a  
certain cause now depending in the High Court of  
Chancery wherein J. P. is the plaintiff and J. S. and  
T. S. are the defendants, pursuant to an order of this  
honorable court bearing date —, on the part and  
behalf of the said complainant.

In *Chancery*.

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Between H. R. an infant by J. M. his next  
friend, . . . . Plaintiff,  
and  
T. J. W. and J. S. B. Defendants.

7. Title of an  
interrogatory,  
in *Chancery*,  
for examina-  
tion of a per-  
son *pro inter-*  
*esse suo*, pur-  
suant to an or-  
der made on  
petition. In *Chancery*.

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An interrogatory to be exhibited to G. R. of —,  
before F. C. esq. one of the Masters of this honorable  
court, for the examination of the said G. R. *pro inter-*  
*esse suo* in certain premises in the pleadings in this  
cause mentioned pursuant to an order of this honorable  
court bearing date —, made on the petition of the  
said G. R.

\*In Chancery.

Between A. C. . . . Complainant,  
and  
T. H. . . . Defendant.

Interrogatories to be exhibited on the part of the said complainant for the examination of A. B. as to his interest in the event or decision of this cause, the said A. B. being a witness produced sworn and offered to be examined in the said cause on the part and behalf of the said defendant.

8. Title of interrogatories, in *Chancery*, for examination of a witness as to his interest in the matters in issue.

In Chancery.

Interrogatories to be exhibited to witnesses pursuant to an order of his Majesty's High Court of Chancery bearing date the — day of —, on the part of A. B. complainant, and made in a certain cause there depending and at issue wherein the said A. B. is complainant and C. D. is defendant, to discredit the testimony of E. F. and G. H. two witnesses heretofore examined in the said cause on the part of the said defendant(a) upon interrogatories.

9. Title of interrogatories, in *Chancery*, to the credit of witnesses examined on the part of the defendant.

### *First General Interrogatory.*

Do you know the parties complainant and defendant [*or*, complainants and defendants] in the title to these interrogatories named or [any or] either and which of them, and how long have you known them respectively or such [one] of them as you do know?(b) Declare the truth, and your utmost knowledge remembrance and belief herein. [*Or thus*: Declare the truth of the several matters inquired after by this interrogatory, according to the best of your knowledge remembrance and belief with your reasons fully and at large.(c)]

As to the witness's knowledge of the parties in the cause.

(a) If the witnesses were examined before commissioners, proceed thus:—

"Upon interrogatories by virtue of a commission issued out of the said court directed to G. R. and others for the examination of witnesses in the said cause."

(b) Sometimes the first interrogatory is also directed to an inquiry as to the witness's knowledge of deceased persons, as thus:—

"And did you or not know J. A. and C. his wife deceased the late grandfather and grandmother of the said complainant, and F. A. deceased the late uncle of the said complainant, in the pleadings of this cause respectively named, or any or either and which of them in their his or her life time, and for any and what length of time before their his or her decease?" Declare, &c.

*Or*, to an inquiry as to the witness's business or profession, as thus:—

"And what profession or business in life do you follow, and where and how long have you followed the same?" Declare the truth, and your knowledge herein.

(c) These are the general forms used in the conclusion of interrogatories according to circumstances; in the subsequent pages reference is made thereto thus: Declare, &c.

*\*The concluding General Interrogatory.*

Lastly.—Do you know any other matters or things touching the matters in question in this cause which may tend to the benefit or advantage of the said complainant therein [*or*, the said defendants or any or either and which of them therein?] If yea, Set forth the same and all the circumstances and particulars thereof fully and at large according to the best of your knowledge remembrance and belief as if you had been thereto particularly interrogated.

*Or thus:*

Where interrogatories are exhibited on the part of some of several defendants.

Lastly.—Do you know or can you set forth any other matter or thing which may in any wise tend to the benefit of the said defendants or of either of them in this cause, other than the said defendants, J. J. and G. V.? If so, Set forth the same, and all the circumstances and particulars thereof, according to the best of your knowledge remembrance and belief together with your reasons at large.

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SECT. II.

FORMS OF INTERROGATORIES FOR THE EXAMINATION OF WITNESSES  
IN CHIEF.(1)

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To prove the delivery of the

Whether or no did you at any time and when as the solicitor of the said complainants deliver to the said defendant or to any per-

(1) Interrogatories for the examination of witnesses must be signed by counsel, and should only extend to points material and not confessed; *Bea. Ord.* 70, 71, 184, 273, 312; if the interrogatories are leading, or if they are scandalous or both scandalous and impertinent, they will be suppressed with costs; see 2 *Madd. Ch. Pr.* 412; 2 *Fowl. Ex. Pr.* 127; *White v. Fussell*, 19 *Ves.* 112, 2d edit.

Interrogatories framed thus, "Did you not do or see," &c. "Did you not hear that," &c. are accounted leading.

Where the plaintiff's christian name is mistaken in the title of the interrogatories the depositions cannot be read, nor will the court permit the title to be amended; *White v. Taylor*, 2 *Vern.* 435.

Interrogatories administered to witnesses are all strung together, and the party by his agent points out the particular interrogatories or parts of interrogatories to which he wishes the witness to be examined.

A witness may object to answering questions which may have a direct tendency to criminate himself, or render him liable to disabilities or pecuniary penalties, (see *Paxton v. Douglas*, 16 *Ves.* 242, 3,) but a witness cannot demur to being examined because the question is not pertinent to the matter in issue; *Ashton v. Ashton*, 1 *Vern.* 165; if interrogatories be improperly exhibited to a witness (as if for instance he is a party interested) he must demur, and must state his reasons on oath; see 2 *Madd. Ch. Pr.* 408; *Parkhurst v. Lowten*, 2 *Swanst.* 204; *Bowman v. Rodwell*, 1 *Madd. Rep.* 266; *Nightingale v. Dodd*, *Mos.* 229.

Where a witness had in his examination omitted to state material facts, which he had stated in writing previously to his examination that he could depose to, the court

son and whom by name on his part any abstract of the title of the \*said complainants to the estates and premises in the pleadings mentioned? Whether or no did the said defendant or any person and who on his part at any time or times and when and how make to you any and what objection to the said title, and what answer did you thereupon make, and if by writing set forth the same in the words and figures thereof, and what afterwards passed between you and the said defendant or any other person and whom on his part respecting the said title or the agreement for purchase in the pleadings mentioned? Set forth, &c.

abstract of the plaintiff's title to the defendant;

[ \*689 ]

whether any objection was made to the title; and what passed relative to the title or agreement for purchasers.

\* Were you at any time and when and by whom and on whose behalf furnished with an abstract of the title of the said complainants to the premises described as lot 2 in the pleadings of this cause mentioned? And did you at any time or times apply to any person or persons and whom by name as the solicitor or solicitors of the said complainants for a copy or abstract of the alleged lease under which the said premises were stated to have been let? If yea, What passed between you and the solicitors for the said complainants at the time of making such application relative to such alleged lease? Declare, &c.

To prove that witness as solicitor for the defendant was furnished with an abstract of title to an estate sold by the plaintiffs,—his application for an abstract of the application.

lease under which the estate was stated to have been let, and what passed upon such

\* Had or not the said R. W. as you know or do for any and what reason believe access to the said M. W. his wife, or was he or not in her company or did he or not see her at any and what times or time from the month of — to —? And if yea, When and how often and at or about what times or time and for what space of time at each time and where and on what occasion? Where did the said R. W. live or reside during all such period of time as you know or do or for any and what reasons believe? Declare, &c.

To prove whether a husband had access to his wife during a particular period and when, and where he resided.

\* Whether or not did the said defendant C. L. as you know or do for any and what reasons believe, deliver or cause to be delivered unto the said S. D. F. in his life-time a written account or any writing purporting to be an account of some debt or debts or sum or sums of money that was or were due or owing by or from the said S. D. F. to the said defendant C. L.? If yea, In what character and language was such account or writing written or made out, and when or about what time was the same delivered to the said S. D. F., and

To prove the delivery of an account of moneys owing from a deceased person to the defendant, in what language written, when deliver-

refused to permit him to be re-examined; *Asbee v. Shiply*, 5 Madd. 467; and see *Lord Abergavenny v. Powell*, 1 Mer. 130; *Bott v. Birch*, 5 Madd. 66.

The examination of witnesses being foreigners must be in English, and the interrogatories must for that purpose be translated into the language of the deponents, and their answers translated by sworn interpreters; *Lord Belmore v. Anderson*, 4 Bro. Ch. Ca. 90.

[ \*690 ]  
ed, and the  
particulars of  
the debt,  
and whether  
the deceased  
examined the  
account;

To prove that  
he delivered  
the same to  
the witness,  
that witness  
by his direc-  
tion made a  
copy thereof,  
and in what  
language,  
the delivery  
thereof to the  
deceased,  
that he exam-  
ined the same  
and made ob-  
servations  
thereon;

To prove the  
copy in the  
possession of  
the witness as  
an exhibit,  
and the hand-  
writing.

That witness  
may translate  
the copy into  
English and  
the observa-  
tions made  
thereon, dis-  
tinguishing  
the parts writ-  
ten by the wit-  
ness and by  
other persons.

what was or were the particular or particulars of such debt or \*debts or sum or sums of money, and how much did the same amount unto in the whole as you know remember or believe? Whether or no did the said S. D. F. as you know or do for any and what reason believe, peruse or examine the said account? Did or did not the said S. D. F. ever deliver the said account to you? If yea, When and about what time and for what purpose did he deliver the said account to you? Did you or did you not by the order or direction of the said S. D. F. or otherwise and how, at any time and when make or write a true copy of the said account? If yea, In what language and character and for what purpose was such copy made or written, and was or was not such copy at any time and when and by whom delivered to the said S. D. F.? And did or did not the said S. D. F. at any time or times and when peruse and examine the said copy, and did he or did he not in his own hand-writing or otherwise and how and in what language and character and at or about what time or times make or write any and what minutes memorandums or observations on the said copy? Whether or no is the paper-writing marked with the letter (B) and now produced by you or any and what parts and part thereof of your own hand-writing? If yea, How much or what part or parts thereof is or are your own hand-writing, and how much and what part or parts thereof is or are of the hand-writing of any other person or persons and whom as you know or do for any and what reason believe? Is or is not the said paper-writing marked with the letter (B) the copy which was made or taken by you of the aforesaid account? If yea, Translate the said paper-writing marked with the letter (B) and all the minutes memorandums and observations written or made thereon into and set forth the same in the English language, and in making such translation, distinguish and point out the English of so much or of such part or parts of the said paper-writing as was or were written by you, and also the English of so much or of such part or parts of the said paper-writing as was or were written by any other person or persons and whom? Declare, &c.

To prove that  
witness was a  
party as a  
trustee to cer-  
tain deeds;  
That he was  
in the employ  
of certain per-  
sons, and that  
an account ex-  
isted between  
them and a  
deceased  
plaintiff;  
That witness  
a trustee, sold  
certain  
houses;

\* Were you or not a party as a trustee for sale or otherwise and how, to certain and what indentures of lease and release bearing date the 9th and 10th days of March 1792, in the pleadings in this cause stated, or to some or one and which of them? And were you or not for some length of time and from and to what period in some and what manner in the employ of T. E. and G. D. both now deceased, in the pleadings in this cause named? And do you or not by some and what means know whether some and what account did not exist between the said T. E. and G. D. or one and which of them in their or his life-time with W. J. deceased, the late plaintiff in this cause? Did you or not as a trustee for sale as aforesaid, ever and when sell and dispose of the respective houses and premises of which you were a trustee for sale under such indentures of lease and release as aforesaid? And was there or not some and what account open

and unsettled between the said W. J. deceased and the said T. E. and G. D. or with one and which of them at the time the said \*houses and premises were respectively so sold and disposed of by you? If yea, Was such account ever to your knowledge settled and adjusted between them or any and which of them, and was or not such account an open and unsettled account at the time of the death of the said W. J. as you know or for some and what reason believe? And if such account had ever been stated settled and adjusted between the said T. E. and G. D. and the said W. J. in his lifetime, should you or not from your connexion or by your employment with the said T. E. and G. D. or by some and what other means have known thereof? Do you or not know whether the said W. J. in his life-time made or caused to be made any and what applications or application to the said T. E. and G. D. or to one and which of them for a statement of or to come to a settlement of the said account existing between them? If yea, Set forth the number of such applications and the respective times or time in particular when the said W. J. made or caused to be made such applications or application, and the nature thereof, and when and by whom made, and in whose presence, and upon what occasions or occasion, and on or about what date in particular was the last time the said W. J. made or caused to be made such application to the said T. E. and G. D. or to either and which of them, and what passed between the said parties respectively at the respective times or time such applications or application were or was made? Declare, &c.

That at the time of such [ \*691 ] sale an account existed unsettled between the deceased plaintiff and certain other persons;

Also to prove the applications made by the deceased plaintiff for a settlement;

and what passed at the time of such applications.

\* Were you or not present at any time and when at the stating of any and what account between the said complainant and the said defendants touching or concerning the estate and effects of the said testator R. F. in the pleadings of this cause named? If yea, Was or were or not any account or accounts touching such estate or effects then settled between them, and was or not any and what balance then settled and ascertained as due to any and which of the said parties, and was or not such balance then paid over, and if not, why and for what reason? Declare, &c.

To prove a statement of accounts between the plaintiff and defendants relative to a testator's estate, what balance was ascertained to be due, and the payment thereof.

Whether or no did you at any time and when deliver to the said defendants or either and which of them, any bill for business done by you on their or either and which of their account not connected with the said cause, and whether or no did you at any time and when cause any and what proceeding to be commenced against the said defendants or either and which of them for the amount of such bill? Declare, &c.

To prove the delivery of an attorney's bill, and that an action was commenced for the recovery of the amount.

\* Did you or not at any or either and which of the meetings between you and the said — inquired after by the last preceding interrogatory, produce or show unto the said — all or any and which

To prove the production of a book to a person con-

taining certain  
[ \*692 ]  
acknowledg-  
ments or me-  
morandums  
signed by him,  
and the decla-  
rations made  
by him rela-  
tive thereto.

of the acknowledgments or memorandums to which his name appears \*to be subscribed, and which are written or contained respectively in the — folios of the said produced book marked (A)? And did the said — or any and which of such occasions or on any other and what occasions or occasion and when in particular, say or declare any thing and what unto you or unto any persons or person and whom by name in your presence or hearing relative to such acknowledgments or memorandums, and to his name appearing to be subscribed thereto, and purporting that he had signed the same or any and which of them, or that his name appearing to be subscribed thereto or to any and which of them was in his own hand-writing or to any such or the like effect? Set forth how and in what manner the said — expressed himself at such times or time in relation thereto? Declare, &c.

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To prove that  
the defendants  
commenced an  
action against  
the plaintiff's  
agent, and  
when, and the  
nature thereof,  
and of the de-  
fence thereto;  
That the same  
came on to be  
tried, that the  
plaintiffs got a  
verdict which  
the court of K.  
B. set aside,  
and directed a  
new trial;  
That the same  
came on at the  
assizes, and  
what passed  
on the trial,  
and the judge's  
charge to the  
jury.

That the jury  
were desir-

ous to find a special verdict, the minute thereof made by the judge; The agreement to refer the amount of damages to arbitration, and what amount was awarded by the arbitrator.

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To prove ad-  
vertisements  
being inserted  
in the public  
papers for the  
discovery of a  
person, and by  
whose direc-  
tion;

\* Did you at any time or times and when and at whose request or in pursuance of any directions or instructions given to you by any person or persons and whom by name, cause any and what advertise-ment or advertisements to be inserted in any and what public paper or papers relating to or for the discovery of the said A. G., and was or were such advertisement or advertisements inserted in such public paper or papers at any time or times and when as you know or for any and



what reason believe? Have you heard of the said A. G. or had you any and what application or applications made to you with respect \*to him or the matter comprised in such advertisement or advertisements since the same was or were so inserted? Declare, &c.

and whether the witness  
[ \*693 ]  
has heard of the individual, or had any applications respecting him since the advertisements.

\* Were you or not employed and when by the said complainant and defendant or either and which of them to prepare the agreement in the said former interrogatory mentioned? If yea, Had you any and what directions from the said defendants respecting the terms of the said agreement, and concerning the land-tax in the said agreement mentioned, and what did the said defendant say to you or in your presence or hearing as to the said land-tax and the sum of 200*l*. to be paid by the plaintiff to the said defendant, and were you informed by either and which of the said parties for what consideration the said premium or sum of 200*l*. was to be paid? Declare, &c.

To prove that witness was employed in preparing an agreement, and the directions given respecting the terms thereof.

\* Did you or not at any time and when hear the said complainant make any proposition to the said defendant respecting his the said complainant's residing with the said defendant in his house, and was any and what agreement come to between the said complainant and the said defendant respecting such matter, and did you or not hear upon that or any other and what occasion the said complainant make any and what promise to the defendant respecting the amount and nature of the recompense which the defendant was to receive from the said complainant for his residing in the said defendant's house? Declare, &c.

To prove a parol agreement respecting the plaintiff's residing with the defendant.

\* Did you or not and by whose desire or direction make any and what division or allotment of the lands in the pleadings of this cause mentioned? If yea, To whom and when did you deliver such division or allotment, and did or not the said defendant J. P. acquiesce in or approve of such allotment and did he take possession of his part or share? Did you or not at any time afterwards and when review or reconsider such allotment and upon what occasion and by whose desire, and did you or not make any second allotment or any and what alteration in your former allotment, and was or not the said division or allotment made by you a fair impartial and just division or allotment? Declare, &c.

To prove that witness made an allotment of certain lands, and to whom, and when he delivered the allotment; that defendant acquiesced therein, and took possession of his and by whose share; that witness afterwards reviewed the allotment, desire and what alterations he made therein.

\* Do you or not know whether the said complainant entered upon and enjoyed any and which of the lands in the pleadings in this cause mentioned in severalty or not? If yea, State what particular lands were enjoyed by the plaintiff and what by the defendant.

To prove that the plaintiff entered upon the lands allotted to him in severalty.

To prove the value of a life annuity.

[ \*694 ]

\* Are you acquainted with the manner of purchasing annuities on lives and the value thereof, and the way in which the same are secured in the public funds? If yea, How long have you been acquainted therewith? What was the value of an annuity of — £. during the life of a person aged — in the month of — according to the method of computing the value of annuities upon lives, and according to the common and usual course of business in transactions of that nature? Declare, &c.

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To prove that the plaintiff was employed by the defendant as her confidential attorney or agent, and for what period.

\* Was or not the said complainant T. C. at any time and when to your knowledge or belief employed as the attorney or agent of the said defendant S. A.? If yea, Declare when the said T. C. was so employed by her or relative to her affairs, and for what length of time, and whether generally as the confidential attorney or agent of the said S. A. as you know or believe, and set forth the grounds upon which you found such your knowledge or belief; Declare, &c.

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To prove who was the author of a book or reputed so to be, and whether it was an original composition.

\* Look upon the book entitled — now produced and shown to you at this the time of your examination, marked with the letter (A), and in the pleadings in this cause mentioned; Who by name wrote or was the author or composer of the said book, or who was and is reputed so to be? Is the said book an original composition, or a copy of any other and what work? Declare, &c.

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To prove an act of bankruptcy by keeping house.

\* Did you or not know A. B. in the pleadings of this cause named, and previously to —, and for any and what time before? If yea, Did the said A. B. at that time and for any and what length of time before carry on any and what trade or business and where, and do you or not previously to the said — recollect any person and whom by name calling at the house or dwelling of the said A. B. for money, and was or not such person a creditor of the said A. B. and was or not the said A. B. at home at such time and did he or not see the person who so called, or what answer was given or sent to such person, and was the answer given or sent by the direction of the said A. B. or with his privity or consent? Declare, &c.

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To prove an act of bankruptcy by lying in prison.

\* Did or not the said T. M. in the pleadings of this cause named previously to the — day of — and from and up to what time in particular, carry on any and what trade or dealing and in what sort of merchandise? Was or not the said T. M. a prisoner in the Fleet Prison, and when did he first become a prisoner there and for and upon what account was he imprisoned, and how long did he continue a prisoner without being bailed or discharged, and what charges or

detainers were there lodged against him during the whole time of such his imprisonment? Declare, &c.

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\* Whether or no did the said defendant C. D. in the life-time of the said S. D. send remit or deliver unto the said S. D. any bill or bills of exchange? If yea, For what sum or sums of money, or of what value or amount was or were such bill or bills of exchange respectively and in the whole, and when or about what time or times was or were such bill or bills of exchange so sent remitted or delivered, and was or were or not the sum or sums of money mentioned in or secured or made payable by the said bill or bills of exchange or some and which of such sums of money received by or paid to the said S. D. or to his order or for his use when and as the same became due and payable or soon afterwards or at any other and what time or times? And did or did not the said S. D. in his life-time and when repay the said defendant C. D. or satisfy him the said sum or sums of money and any or either and which of them or any and what parts or part thereof? Declare, &c.

[ \*695 ]  
To prove a remittance of bills of exchange in the life-time of a deceased person, that the same were duly paid as they became due, and whether the deceased repaid any part of the amount thereof.

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Whether or no did you draw and deliver to the said complainant any and what number of bills of exchange and to what amount for the produce of the said cargo upon the said defendants T. R. and C. S., and did you or not at or about that time or at any time and when ship on board the said ship called the M. or any other and what ship or ships and consign to the said defendants T. R. and C. S. any colonial produce or any and what effects and to what amount in order to provide for the payment of the said bills so delivered by you to the said complainant for the produce of the said cargo, Or whether or no have you at any time or times and when assigned or conveyed to the said defendants T. R. and C. S. or to any other person or persons and whom by name in trust for them or for their benefit any and what estates or property whatsoever in or towards satisfaction of the said bills or any of them or any part thereof, or have the said defendants T. R. and C. S. been in any other and what manner paid or satisfied by you the amount of the said bills or any and which of them or any and what part thereof, or have you in any and what manner and when had credit in account with the said defendants T. R. and C. S. for the amount of the said bills or any and which of them or any and what part thereof? Set forth, &c.

To prove that witness as the purchaser of a ship's cargo delivered bills to the plaintiff for the produce drawn upon the defendants, that he consigned colonial produce to them to provide for the payment thereof, or made over property to them, or that they have been satisfied the amount, or have given witness credit in account for the amount of the bills.

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Do you know and from what circumstances when and where the said complainant A. W. was born and baptised? If yea, Set forth the time and place of her birth and baptism and the reason of your knowledge therein, and who were her father and mother, and where they usually resided at the respective times of the birth and baptism

To prove the birth and baptism of the plaintiff.

of the said complainant, and what was their situation in life. Set forth, &c.

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[ \*696 ]

To prove the boundaries of a glebe lands, in whose occupation the same were at a particular time, and what was then

\*\* Do you know the lands in the pleadings of this cause mentioned called glebe lands ; If yea, Where are the same situate and how are the boundaries thereof marked and described, and in whose occupation and under what term or holding were the said glebe lands on the 4th October 1801, and what was then the annual value of the said glebe lands as you know or for any and what reason believe ? Declare, &c.  
the annual value.

To prove the abutments of a garden, and whether there is any communication between the same and the adjoining premises.

\* Are you not acquainted with the premises in the pleadings of this cause mentioned called the detached garden ; If yea, How is such detached garden fenced or surrounded and by what ground or premises is it bounded or abutted aad particularly on the east side thereof, and is there or not any gate door or opening communicating with any and what premises on the east side of the said detached garden ? Declare, &c.

To prove the boundaries of a parish, and how divided from the adjoining one.

Whether or no do you know and how long have you lived in the parish of W. in the county of —, and whether or no did you at any time or times and when attend any and what public perambulations of the said parish, or are you by any and what other means acquainted with the boundaries of the said parish, and in particular with the boundary or division between the said parish and the parish of C. and how and in what manner is the said parish of W. divided from the said parish of C. ? Declare, &c.

To prove the boundaries of a piece of land containing a stone quarry, and its distance from a river, particularly with reference to a map or plan thereof.

\* Are you or not acquainted with the piece or parcel of land containing a stone quarry in the pleadings of this cause mentioned to be situate at or near certain places called or known by the names of — and — in the parish of — and near to the river A. ? If yea, How long have you been acquainted therewith, and how is such piece of land bounded and at what distance is the same situated from the said river A. ? Look upon the map or plan now produced and shown to you at this the time of your examination, marked with the letter (A).—What doth the same purport to be or contain, and does or not the same contain a true and correct plan of the said piece or parcel of land and quarry, and of the boundaries thereof as you know or do for any and what reason believe ? Declare, &c.

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To prove whether a chapel was used as a Roman Catholic chapel or Protestant chapel, whether baptisms, marriages,

\* Do you know L. H. Chapel now or formerly situated at L. in the parish of B. in the county of L. or the site thereof ? Was the same used as a Roman Catholic Chapel or as a Protestant Chapel as you know or for any and what reason believe ? Were the ceremonies of baptism marriage and burial performed in the said chapel as you know or have heard and from whom or for any and what reason believe, and were there or not any registers or register of baptisms

marriages and burials made or kept in or adjoining to the said chapel? If yea, Are or is there any registers or register thereof now kept in or adjoining to the said chapel, of baptisms marriages and burials performed therein? Do you know or have you heard and from \*whom whether the said chapel and registers were ever and when destroyed by fire or otherwise and how and by whom? Have you heard any person or persons and whom by name make any and what declarations relative thereto, and were or was such persons or person in any and what manner connected with or in the service of or in any and what manner related to any person in the service of the family of A. in the pleadings of this cause named, and are or is such persons or person or any or either of them now living, and if dead, when did they respectively die? What is the general report or belief of the persons residing in the neighborhood of the said chapel of L. H. or the site thereof relative to the destruction of the said chapel and registers by fire or otherwise as you know or for any and what reason believe? Set forth according to the best of your knowledge remembrance information and belief all and every the matters inquired after by this interrogatory and the grounds thereof.

and burials were performed there, and whether the registers thereof were kept there;

[ \*697 ]

Whether the chapel and registers were destroyed and when and how, what declarations witness has heard relative thereto and from whom;

Whether such persons were connected with a particular family, and whether relative to the

living or dead; and the general belief in the neighborhood destruction of the chapel and registers.

\* Are you or not acquainted with the said complainants J. T. and M. his wife? And if yea, Are you acquainted with the state of the said complainant's family? What children or child have the said complainants J. T. and M. his wife now living, and what are or is the names or name of such children or child? Set forth all you know concerning the particulars inquired after by this interrogatory and the reasons for such your knowledge? Declare, &c.

To prove what children the plaintiffs have.

Whether or no had the said M. H. and A. his wife heretofore or late A. C. in the preceding or 7th interrogatory mentioned or acquired after any and what number of children? If yea, what were their respective names or the names of any and which of them, and particularly are or is not the said complainants R. H. &c. or some or one and which of them the children or child of the said M. H. and A. his wife, and had they or not another son named T. H. and is he living or dead? And if dead when and about what time did he die, and did he or not leave any children or child or issue and whom? Had or not the said A. H. any and what other children or child or issue other than and besides those hereinbefore named? If yea, Are they or any and which of them living or dead and if dead when or about what times or time did they or any and which of them die as you know or do for any and what reason believe? Declare, &c.

To prove what children a plaintiff had by her late husband and their names; that certain of the plaintiffs are the surviving children, and that the widow had another son who died without issue.

\* Do you know what is become of T. H. in the preceding interrogatory named? Is he living or dead? If living, where hath he from time to time resided since the — day of —? Or if dead,

To prove whether a particular person is living or

dead; that he contributed to the maintenance of a child, and frequently visited it;

[ \*698 ]  
the degree of notice or affection he showed towards it, and in what manner he expressed himself; that he treated such child as his own, and that the child treated him as his father.

when or about what time did he die and where? Did he or not for any and what period of time in any manner and how pay or contribute any and what sum or sums of money yearly or otherwise and how for or towards the maintenance or education of the child which is inquired after by the last interrogatory, and did he or not during any and what period of time ever and when or how often and where \*visit or see such child? Were you present at all or any and how many and which of such times? and if yea, Did he at all or any and which of such times take any and what kind of notice of such child, or show or express and how or in what particular manner any and what degree of affection for it and on what account, and how and in what manner did he at such times generally express and behave himself to or respecting such child? Set forth the particulars of such expressions or declarations and any circumstances relating thereto;— Did the said T. H. at all or any and which of such times and in the presence of any other person or persons and whom by name treat such child or speak to it or of it as being his own child, and did such child at all or any and which of such times speak to or address the said T. H. as being its father, or as being in any and what degree or manner related to it? Declare, &c.

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To prove what children a defendant had at the death of a testator, the time of his death, and what children are living or dead.

Whether or no do you know and for how long have you known the defendant J. P., the sister of the said testator W. G. and her family? Whether or no were there any and what children of the said defendant J. P. living at the time of the death of the said testator, and when did the said testator die, and which of such children are now living and what are their respective ages, and if any or either of them have or has died since the said testator, when did she or they die? Declare, &c.

---

To prove the payment of the consideration-money expressed in a deed, and the acknowledgment of the person on receiving the same.

\* What was the true and real consideration of the said deed marked (A)? Whether or no were or was any and what sums or sum of money at or about any and what times or time paid as or for or in part of the consideration thereof, and when and where and by whom and on whose account and to whom and for whose use and on what occasion? If yea, Were you or not present at the time of paying the same or any and what part thereof? And if yea, Did or not the person whose name appears to be subscribed to the receipt indorsed on the said deed at or about the time of signing such receipt say or declare any thing and what concerning his having received or being paid or satisfied the whole or any and what part of the money therein or thereby expressed to be paid to and received by him? Declare, &c.

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To prove a conversation between the plaintiff and

\* Were you at any time and when present at any and what conversation between the said complainant and defendant respecting the said defendant's purchasing of the said complainant his the said

complainant's interest in the sum of 2400*l.* in the pleadings of this cause mentioned to have been paid by him into the Court of Chancery in a certain cause entitled —? If yea, How did such conversation arise and what passed between the said defendant and complainant respecting such purchase, and did or not the said defendant agree to purchase such interest upon any and what terms, and \*what in particular did the said defendant say to the said complainant respecting the said complainant's chance of recovering the said 2400*l.* Declare, &c.

defendant, respecting the defendant's purchasing the plaintiff's interest in a sum of money paid into court

[ \*699 ]

in another cause; the agreement to what terms.

purchase the same, and upon

\* Have you at any time or times and when or how often had any and what conversation or conversations with the said defendant respecting the renewal of the lease granted by the said Dean and Chapter in the pleadings of this cause mentioned? If yea, How did such conversation or conversations arise, and what passed between you and the said defendant respecting the obtaining of such renewal, and did or not the said defendant agree to apply for or make any and what declarations relative to the making of any and what applications for the renewal of such lease, and what in particular did the said defendant say to you respecting such renewal, and was any other person and who by name present at the time of such conversation or conversations or any and either and which of them? Declare, &c.

To prove conversations respecting the renewal of a lease, and also the agreement by defendant to apply for a renewal.

Whether or no were you at any time in the year — and when and where present with the said complainant and the said defendant J. D. when any conversation passed between them respecting the public-house called the — at E., in the occupation of the said complainant, and any agreement relating thereto? If yea, Set forth the particulars of such conversation and what was said therein by the said parties respectively, and whether the said complainant then offered to pay any and what sum of money to the said defendant J. D.; Set forth, &c.

To prove the particulars of a conversation and an offer made by the plaintiff to one of the defendants.

[This was one of a set of interrogatories on the part of public house.]

*the plaintiff to prove an agreement for purchase of a*

\* Did you know F. A. deceased in the pleadings of this cause named the uncle of the said complainant, and did you know H. I. of — deceased or either and which of them in their or his lifetime, and how long did you know them respectively previously to their death or such one of them as you did know, and how and in what manner and for what length of time previously to their deaths respectively did you so know or become acquainted with them respectively? Did you at any time or times and when in particular hear the said F. A. enter into any conversation or conversations with or make any declaration or declarations to the said H. I. or any other

To prove a knowledge of certain persons deceased, and how and for what length of time witness was acquainted with them; To prove conversations between them, or

declarations made by one of them relative to his family and relations, or property to which he considered himself entitled;

[ \*700 ]

To prove declarations by the other, that he was present at the time an agreement was entered into relative to certain property ;  
To prove that witness heard the agreement read ;

To prove the destruction of certain papers by fire ; and that witness saw certain deeds in the sons thereto.

person or persons and whom by name and when in particular and in whose presence relative to his family and relations, or any estate or estates to which he the said F. A. considered himself entitled? And did you at any time or times and when hear the said H. I. make any and what declaration or declarations relative to his being present at the time that any and what agreement was entered into by the said F. A. with any person or persons and whom by name, relative to any and what estate or estates, or to any and what moneys that the said \*F. A. was to receive annually from any person or persons and whom by name, and the consideration thereof? And did you at any time and when hear the said F. A. read any and what deed or deeds, agreement or agreements between him and any and what person or persons relative to any and what estate or estates? And do you know whether any deed or deeds parchment or paper-writings belonging to the said F. A. was or were at any time or times and when, destroyed by fire or otherwise and how? And did you at any time and when see any and what deeds or deed that were or was at any time and when in the possession of the said F. A. that had any and whose seals affixed thereto, or had the names or name of any persons or person and whom signed thereto? If yea, Set forth all and every the particulars inquired after by this interrogatory, or such of them as you do know, and the particulars thereof and of every part thereof. Declare, &c.

possession of one of the deceased persons having the names and seals of certain per-

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Interrogatories to be exhibited, &c. [see p. 685, *antea*,] wherein W. R. and J. P. assignees of the estate and effects of E. T. a bankrupt, are complainants, and T. H. is defendant, on the part and behalf of the said complainants.

1st. [*As to knowledge of the parties, vide antea p. 687.*]

To prove the first conversations with the defendant respecting a bankrupt's affairs ;

What agreement was made respecting the assignment of part of the bankrupt's property or what passed relative thereto ;

That the defendant was informed that the bankrupt was in insol-

2d. Had you at any time and when first and where and in whose presence any conversation with the defendant respecting the affairs of E. T. the bankrupt in the pleadings of this cause named? If yea, Set forth upon what occasion such conversation took place and the particulars of such conversation, and what was said thereon by the said defendant or by you or any other person or persons to or in the presence or hearing of the said defendant respecting the affairs of the said E. T., and was any and what agreement then come to by you on the part of the said E. T. with the said defendant respecting the assignment of any and what leases, or was any thing and what then said by the said defendant or by you or any other person and whom to the said defendant or in his hearing respecting any such assignment? And did you then inform the said defendant that the said E. T. was in insolvent circumstances, or did any thing and what pass as to the insolvency of the said E. T. or as to any and what composition being made or proposed to his creditors, or as to the said defendant's guaranteeing such composition? Set forth, &c.



3d. Had you at any other time or times and when afterwards before the commission of bankrupt was taken out against the said E. T. any other conversation or conversations with the said defendant respecting the affairs of the said E. T. and where and in whose presence and upon what occasions respecting such affairs? If yea, Set forth the particulars of such conversation or conversations in the order in which the same took place, and what was said thereon respectively by you or the said defendant or any other person or persons and whom in his presence or hearing; And was any and what agreement come to, or any thing and what said in any and which of such \*conversations, as to the assignment of any and what leases by the said E. T. to the said defendant, and did any thing and what pass in any and which of such conversations as to the insolvency of the said E. T. or as to any and what composition being made or proposed to his creditors or as to the said defendant guaranteeing such composition? Set forth, &c.

4th. When did you first inform the said defendant of or did you or not learn from him that he knew or suspected the insolvency of the said E. T., and when first did any thing and what pass between you and the said defendant or any other person and the said defendant in your presence and hearing respecting a composition to be made and proposed to the creditors of the said E. T., and when first did the said defendant agree to guarantee such composition? Set forth, &c.

Lastly. [*The last general interrogatory, vide antea, p. 688.*]

[These interrogatories were exhibited to the clerk of the bankrupt, who had discovered his insolvency and informed the defendant of it.]

teeing the same. To prove when the defendant was first informed of the insolvency rupt, and when first any thing passed respecting a composition with his creditors, and when first the defendant agreed to guarantee the same.

vent circumstances, and what passed relative to a composition with his creditors, and as to the defendants guaranteeing the same.

To prove subsequent conversations with the defendant respecting the bankrupt's affairs;

[ \*701 ]

What agreement was made, or what passed as to the assignment of part of the bankrupt's property, and as to the insolvency of the bankrupt, or a composition with his creditors and as to the defendant's guarantee of the bank-

\* Were you or not employed by the said J. R. deceased as his attorney or solicitor in the purchase or in completing the purchase of the said reversionary estate and interest of the said bankrupt, and in preparing the necessary conveyances and assurances thereof? If yea, Did you lay the abstract of the title thereto before or employ any counsel and whom by name on behalf of the said J. R. or on whose behalf to prepare the necessary conveyance or conveyances of the said reversionary estate and interest of the said bankrupt, and to whom by name? And did or not the said J. R. inform you of his intentions in making such purchase, and did or not the counsel so employed by you prepare the necessary drafts of such conveyances according to the directions and instructions of the said J. R.? If yea, Set forth the declarations made by the said J. R. to you relative to and expressive of his intentions in making such purchase, and how and in what manner and for what purpose such conveyances were prepared by such counsel as you know or do for any and what reason believe; Declare, &c.

drafts of the conveyances and the declarations of the deceased relative to such the conveyances which were prepared.

To prove that witness was employed by a deceased person as his attorney in the purchase of a bankrupt's reversionary estate; that witness laid the abstracts before counsel with instructions to prepare the conveyances, and the intentions of the deceased in making the purchase; That counsel prepared the purchase, and

To prove that he altered his intentions with regard to the conveyances, the directions which he gave as to the alterations to be made, and his intentions relative thereto.

\* Did or not the said J. R. at any time and when alter his intentions with regard to the draft conveyances inquired after by the preceding interrogatory, and did or not the said J. R. give directions to you or to any other person or persons and whom by name to make any and what alterations and insertions in the said draft conveyances, and what was the intention expressed by the said J. R. in making such alterations as you know or do for any and what reason believe? Declare, &c.

[ \*702 ]

To prove that certain deeds of conveyance were prepared, and by whom;

That Sir T. B. was a party, and executed the same and the circumstances attending such execution;

To prove whether drafts thereof were previously prepared;

Whether the same were submitted to Sir T. B. for his perusal; Whether he perused or approved of the same, or made any alterations or corrections therein;

Whether the engrossments were prepared from such

drafts; Whether any attorney was present on his part, and whether such attorney read over the engrossments, and whether the same were read over to Sir T. B. before he executed the same, and whether the deeds or a counterpart were left with him or his steward.

\*\* Do you know or can you set forth whether any deed or deeds of grant or conveyance was or were made for the purpose of carrying the agreement in the last preceding interrogatory mentioned into execution? If yea, By whom was or were such deed or deeds prepared? Was or not Sir T. B. in the pleadings in this cause named a party to such deed or deeds? If yea, Whether or not did he execute such deed or deeds or any of them? If yea, then set forth when and upon what occasion and at what place and in whose presence the said Sir T. B. executed the same; Whether or not were or was any drafts or draft made from which such deed or deeds was or were prepared and engrossed? If yea, Whether or not was or were such draft or drafts, or any and which of them at any time submitted to the said Sir T. B. for his perusal, or to any person on his behalf? If yea, Whether or not did the said Sir T. B. or any person on his behalf peruse such draft or drafts or any and which of them? Whether or not did the said Sir T. B. or any person on his behalf approve of such draft or drafts, or make any and what corrections amendments or alterations therein? Whether or not was or were the engrossment or engrossments of such deed or deeds so executed by the said Sir T. B. prepared or copied from such draft or drafts? Whether or not was any attorney or other professional person present at the execution of the said deed or deeds on behalf of the said Sir T. B.? If yea, Whether or not did such attorney or professional person peruse or read over such engrossments or engrossment? Whether or not were or was the same read and by whom to the said Sir T. B. before he executed them? Whether or not were or was such deeds or deed or any counterpart thereof then or at any time and when left in the possession of the said Sir T. B. or of his stewards or agents? Declare, &c.

To prove a correspondence with, or the receipt of letters from the defendant; also to prove the

\* Whether or no did you at any time or times and when and on whose behalf correspond by letters or otherwise and how with the said defendant T. H., or did you or not at any time or times and how or in what manner and by what means receive any letter or letters from him with respect to —? And if yea, Have you such letters or any and which of them in your possession custody or power, or

what is become of the same respectively? If you are able, produce such letters, and declare how or in what manner and by what means the same respectively came into your possession, and of whose hand-writing all such letters respectively are, and were or was not the same or any or either and which of them ever and when and by whom and on what occasion produced or shown to the said defendant? If yea, in whose hand-writing did he declare or admit the same respectively or any and which of them to be, and what is the purport or effect of such letters respectively? Declare, &c.

hand-writing thereof, and how the same came into the witness's possession; and in whose hand-writing the defendant admitted the letters to be upon the same being shown to him.

\* Whether or no were you on or about the — day of — and for how long before employed as clerk or book-keeper in any and what trade or business carried on by the said defendant S. F. in co-partnership with his said brother A. F. or any other person or persons and whom and at what place? If yea, Whether or no had you any and what opportunity to know, and did you or not know the circumstances and state of credit of the said trade or business, and of the said S. F. and of the other person or persons interested therein, and what were the circumstances and state of credit of the said S. F. and of the said other person or persons on or about the said — day of —, and for some and what time before? Whether or no as you do for any and what reason know and believe, were the said defendants or any or either and which of them in any and what manner acquainted on or about the said — day of — with the circumstances and state of credit of the said S. F. and of his said co-partner or co-partners; and whether or no did the said defendants or any and which of them at any time and when on or about the said — day of — refuse payment of any draft for a sum of —l. or any other and what sum of money drawn on them or some and which of them by the said S. F. and his said co-partner or co-partners or any and which of them, and for what reason and under what circumstances did they refuse such payment? State the particulars of the several matters hereinbefore inquired into, fully and at large, and the truth declare, &c.

[ \*703 ]  
To prove by a clerk, the circumstances and state of credit of the business of a partnership firm, and of the partners, and that the defendants were acquainted therewith, and had refused payment of a draft drawn upon them by the firm.

\* Did you or not know J. S. in the pleadings of this cause named? If yea, Is he living or dead, and if dead, where and when did he die, and did you or not see him after he was dead and where was he buried, and did you or not attend at his funeral or how do you know that he is dead? Declare, &c.

To prove the death of a party and his burial.

\* Did you know the leasehold estate called W. in the particulars of the estate in the pleadings of this cause mentioned? And if yea, Did you know —? And if yea, Was the said — living or dead on the 4th October 1821, and if dead, when did he die, and how do you know that the said — is dead? And was or not the said — one of the

To prove the death of a nominee in a lease held for lives.

lives named in the lease of the said estate called W. as you know or for any and what reason believe? Declare, &c.

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To prove the death of subscribing witnesses, and their hand-writing.

[ \*704 ]

Did you know A. B. and C. D.? If yea, Do you know whether they or either and which of them be now living or dead? And if they are dead, when did they respectively die, and how do you know that they are both or either of them is dead? Declare particularly your reasons for knowing or believing that the said A. B. and C. D. are or that either and which of them is dead; And are you acquainted with the character or manner of hand-writing of the said A. B., \*and C. D. or either and which of them? If yea, Look on the exhibit marked with the letter (A) and now produced and shown to you at this the time of your examination, and at the names of A. B. and C. D. indorsed thereon as witnesses to the sealing and delivering thereof, and declare whether the same be of the respective proper hand-writing of the said A. B. and C. D. as you know or for any and what reason believe; Declare, &c.

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To prove the death of a witness examined *de bene esse*, and a copy of the register of his burial.

\* Did you or not know J. G. late of —, a witness examined *de bene esse* in this cause? If yea, Do you know whether he is living or dead, and if dead, when did he die, and how did you become acquainted with his death? Look upon the paper-writing now produced and shown to you at this the time of your examination marked with the letter (A) and purporting to be a copy of the register of the burials of —? Did you at any time and when carefully examine the same with the entry made in the register book of or kept for any and what parish or place, and is the same a true copy thereof as you know or for any and what reason believe? Declare, &c.

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To prove the debt due to the plaintiffs.

Whether or no was the testator W. O. in the pleadings in this cause named at the time of his death indebted to the said complainants or either and which of them in any and what sum or sums of money, and when and by what means and on what account did the said testator become so indebted? Declare, &c.

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To prove that a deceased person was indebted to the defendant;

applications made to him for payment,

\* Was or not the said S. D. in his life-time indebted unto the said defendant C. L. in any sum or sums of money as you know or do for any and what reason believe? If yea, In what sum or sums of money and for what or on what account or accounts and to what amount was the said S. D. so indebted unto the said defendant C. L.? Whether or no did the said defendant C. L. by himself or by any other person or persons and whom in the life-time of the said S. D., apply to or request the said S. D. to pay or satisfy him the said de-

fendant C. L. such debt or debts or any or either or which of them or any and what parts or part thereof, or make any other and what application to the said S. D. touching or concerning the said debt or debts or any or either and which of them or any and what parts or part thereof? If yea, When or about what time or times and where and in what manner was or were such application or applications or request or requests made, and what did the said S. D. do say or declare then or on that occasion? Whether or no did the said S. D. in his life-time and when or about what time or times and where and upon what occasion or occasions say confess acknowledge or declare unto you or unto any other person or persons and whom in your presence or hearing, anything and what touching or concerning such debt or debts or any or either and which of them or any and what part or \*parts thereof? And did you or did you not at any time or times and when by the order or direction or at the desire and request of the said S. D. or of any other person or persons and whom write or send any and what letter or letters or any other and what writing or writings and of what contents purport or effect to the said defendant C. L. touching or concerning the said debt of debts or any or either and which of them or any and what parts or part thereof? Whether or no did the said S. D. at any time or times in his life-time and when where and in what manner and upon what occasion or occasions and to whom and in whose presence and hearing, admit confess or acknowledge or promise to pay the said debt or debts or any or either and which of them or any and what parts or part thereof? And did or not the said S. D. at any time or times and when in his life-time pay or in any and what manner satisfy the said defendant C. L. the said debt or debts or any or either and which of them or any and what parts or part thereof? Declare, &c.

the deceased's acknowledgments of the debt;

[ \*705 ]

that witness wrote several letters to the defendant by the deceased's direction respecting the debt; that the deceased promised to pay the same;

and whether the debt was ever paid.

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*[To prove the execution of deeds; see p. 721, 2, postea.]*

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\* Have you now or have you not lately and when last had in your custody or possession or power certain deeds papers writings and documents in some and what chest or otherwise of or relating to the estates and family of A. in the pleadings in this cause named, or of some and which of them? If yea, How did the same come into your custody or power, and from whom and when did you receive or possess the same and each and every of them, and how did the same come into the custody possession or power of the person or persons from whom you received or possessed the same as you know or have heard, or for any and what reason believe? Declare, &c.

To prove that witness had certain deeds in his possession, from whom he received the same, and how the same came into the possession of the persons from whom he received the same.

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Look upon the deeds papers or writings produced, &c. What do the same respectively purport to be? Were or was the same or any

To prove the finding of old

deeds, and in whose custody the same have been.

or either and which of them at or about any and what time or times found and by whom and on what occasion in the custody of any and what persons or person amongst any deeds or writings relating to any and what and whose estate? Where and in whose custody have or hath the same or any or either and which of them been from time to time and for any and how long time kept, and whether or not amongst the deeds or writings relating to any and what estate, or how otherwise? Declare, &c.

To prove by whom certain

[ \*706 ]

deeds were brought to a person to be executed; whether the same were read over to him or on his behalf;

Whether witness was requested by the person who brought over the deeds to peruse and examine the same on behalf of the person by whom they were to be executed;

Whether any memorandum of agreement or draft accompanied the deeds, and what was the understanding at the time of execution with regard to the premises comprised therein.

To prove what the person who brought the deeds to be executed said, which had the effect of inducing the witness to believe that the release had been prepared

\* By whom were the said indentures brought over to B. to be executed, and upon what day in particular, and whether or no upon occasion of the same being so brought over and prior to the execution thereof were the same or any and what parts thereof in particular read over to the said Sir T. B. by you or by any person and whom by name on his behalf for their or his approbation, or were the same or any and what part thereof in particular read over by any person and whom by name, in or out of the presence of the said Sir T. B.? And if yea, by whose directions and requests did such person so read and inspect the same, and what parts and for what purpose and with what view in particular, and where was the said Sir T. B. when such person so inspected the same or any and what part thereof; and in particular were you or was any other person and who by name upon the occasion aforesaid requested by the said person or persons who brought over the said indentures to B. or either and which of them to peruse and examine the same on behalf of the said Sir T. B. and to approve thereof for him, and to see that the same was properly and fairly drawn up; and whether or no was the aforesaid memorandum of agreement or any draft of the said release produced on the occasion aforesaid, or was the same or any and what part thereof comprised with the said release, and whether or no, as you do know or have any and what reason for believing, was it understood or believed by you and the other persons in the employment or service of the said Sir T. B. who were present, and by the said Sir T. B. when he executed the said release, that the said coal comprised therein was the same only as was comprised in the said memorandum of agreement, or was it understood and known or believed by the said Sir T. B. or by you and such other persons or either and which of you that the said release did comprise more than such last-mentioned coal and what other coal? Set forth, &c.

\* Whether or no did the persons who brought over the said indentures to be executed as aforesaid or either and which of them then inform or intimate to you or to any other person present on behalf of the said Sir T. B. that the said release had been prepared by them or by either and which of them according to the directions of the said Sir T. B. or with his knowledge or consent, or intimate or say any thing upon the aforesaid occasion which had the effect of inducing you or such other persons present on behalf of the said Sir T. B. to suppose that the said release was properly prepared and according

to the directions and instructions received from him, or that he was acquainted with the terms and conditions thereof, or intimate or say any thing which had the effect of making you inspect or examine the same less minutely and attentively than you would otherwise have done, or which tended thereto? And if yea, What was the nature and purport of such intimation, and what fell from such persons and from either and which of them so far as you recollect the same, and how long did such person remain at B. after the same release was executed? Set forth, &c.

according to the instructions given and to be less careful in examining the same.

\* Whether or no did you upon occasion of the same release being brought to B. for execution examine or read over the whole thereof? And if nay, What were the reasons which prevented you \*from so doing or which made you think it unnecessary so to do? Set forth, &c.

To prove why witness thought it un-

[ \*707 ]

necessary to examine the indenture of release.

\* Whether or no did the persons who brought over the said release to be executed as aforesaid propose or invite any inspection or examination thereof? Set forth, &c.

To prove whether the person who brought the release to thereof.

be examined proposed an examination

\* Whether or no was there upon the occasion last mentioned any appearance of eagerness and anxiety on the part of the persons in the preceding interrogatory referred to or other and which of them that the said indentures of lease and release should be forthwith executed by the said Sir T. B.? And if yea, did either and which of them express such eagerness and anxiety to you or to any other person in your presence, and what reason did they or either and which of them assign for such eagerness and anxiety shown? And whether or no did such eagerness or anxiety on their part escape your attention and observance at the time when the same was shown, and did you then draw any conclusion or inference therefrom? And if yea, What conclusion and inference did you then draw, or did you draw any and what inference therefrom at any subsequent time, and when did such eagerness and anxiety if any for the first time appear state, and when did you for the first time draw any and what conclusion or inference therefrom, and why did you not draw any such inference therefrom at the time when the same was shown? Set forth, &c.

To prove that the person who brought the deeds to be executed showed great anxiety to have them executed; that such anxiety did not escape the witness's observation, and what inference he afterwards drew therefrom, and when for the first time.

\* Whether or no upon discovering the said grant to be objectionable did you take any and what steps for the purpose of altering the same and in what particular or particulars did you endeavor to have the same altered, and state all such particulars, and whether or no did you ever and when endeavor to have any alteration made in the description of the parcels of land in the said release contained with the view of conforming the same with the description of the parcels contained in the said memorandum of agreement or with any other and what view, and if not why not? Set forth, &c.

To prove what steps witness took upon discovering the indenture of release to be objectionable to have the same altered, and the parcel made conformable to the agreement.

description contained in the previous

To prove that witness examined the agreement and release; and when he first discovered that the description of the lands comprised in the release differed from the agreement, or by whom he was informed thereof, and

\* Whether or no did you ever compare the said memorandum of agreement and release as to the description of the coal comprised therein respectively and of the lands comprised therein respectively, and of the lands under which the same coal did lie, and did you or not discover, or were you or not informed that the said memorandum of agreement and release differed in any and what particulars, and when did you for the first time discover that the said memorandum of agreement and release to differ therein, or by whom were you informed thereof, and what was the occasion of such variation being discovered so far as you do for any and what reason know or believe, and by whom by name was such variation first discovered? Set forth, &c.

when such discovery was first made, and the occasion thereof.

To prove that promises were held out that the indenture of release should be corrected.

\* Whether or no while you acted in the said land agency were any promises made or expectations held out to you by the grantees named in the said release or by any and which of them that the same should be corrected and in any and what particular, and when and in the presence of whom by name and upon what occasion were such promises made or expectations held out, and in what manner were the same made and held out respectively? Set forth, &c.

[ \*708 ]

To prove that witness after the release was executed by Sir T. B. informed him of various objections which he had discovered to the terms thereof; that Sir T. B. expressed his disapprobation of the terms in which the deed was drawn up; and that he would never have acquiesced to any claim on the part of the grantees to a particular farm if such claim had been made in his life-time; but that he would

\* Whether or no did you at any time after the release was executed and when inform the said Sir T. B. that you objected to the terms and stipulations thereof or to any and which of them in particular, and whether or no did the said Sir T. B. ever and when in particular express to you or to any other person as you do know or believe by name any disapprobation of the manner and terms in and upon which the said release had been drawn up? And if yea, What was the extent of such disapprobation, and to which of the terms and stipulations of the said release was such disapprobation in particular and exclusively directed? And whether or no as you do for any and what reason know or believe would the said Sir T. B. have continued to acquiesce in the said release, and especially would he have acquiesced in any claim on the part of the said L. M. C. to the said farm in the year 1789 occupied by J. K. if any claim thereto had been made or declared in his life-time or if he had conceived that any such claim would thereafter be made? And would he as you do for any and what reason know or believe have endeavored to set aside or alter the said release by any and what proceedings in any and what particulars if he had become aware of the terms and conditions thereof, and especially if he had become aware that more coal was comprised therein than in the said memorandum of agreement? Set forth, &c.

have taken proceedings to have had the deed rectified if he had been aware that comprised therein than in the previous agreement.

To prove under what circumstances witness happened to be

\* How came you to be present at B. at the time when the before-mentioned indentures of lease and release were executed, and for present at the time of the execution of certain deeds.



what purpose were you there, and whether or no for such purpose exclusively or for any and what other purposes? Set forth, &c.

\* Was there or not any dispute or difference between the said complainant and defendant relative to the said complainant's paying the sum of ———/ or any other and what sum or sums of money to R. T. in the pleadings in this cause named? If yea, When or about what time did such dispute or difference arise or take place, and what was the particular nature thereof? Declare, &c.

To prove a dispute having arisen between the plaintiff and defendant with regard to the payment of a certain sum of money;  
To prove an agreement to refer such dispute to arbitration; the decision made by the arbitrator, and the defendant's acquiescence therein.

\* Did or not the said complainant and defendant ever and when agree to refer such dispute or difference to the arbitration or determination of any person or persons and whom by name? And if yea, Did or not such person or persons undertake such reference and fully and fairly hear the said complainant and defendant touching such dispute or difference? If so, When and where did such arbitrator or arbitrators hear the said complainant and defendant, and did or not such arbitrator or arbitrators make any and what award or decision or give any and what opinion touching the matters so referred to him or them? And was or not the said defendant ever and when and where and by whom and how or in what manner informed or \*made acquainted with such award decision or opinion, and did he or not then or at any other time or times and when make any and what declarations respecting the same, and did he or not appear to be satisfied therewith? Declare, &c.

[ \*709 ]

\* Do you or not know, and if yea, how and by what means, whether the said complainant H. S. ever and when and of whom and in what manner received any and what sum or sums of money and to what amount for or in respect or on account of the dividends due upon the sum of 700*l.* 3 per cent. consolidated bank annuities in the pleadings of this cause mentioned, and in particular do you know whether she received such dividends or any part thereof and from whom subsequently to the ——— day of ———? Declare, &c.

To prove the receipt of dividends upon a sum of stock by the plaintiff.

\* Were you or not at any time and when during what space of time in particular employed by the said defendant J. G. in the pleadings in this cause named, as his attorney or solicitor? If yea, Look upon the exhibits now produced and shown to you at this the time of your examination marked respectively (A) and (B), the one marked (A) indorsed as purporting to be an "abstract of the title of E. F. M." &c. and the one marked (B), indorsed as purporting to be a "further abstract of the title of E. F. M." &c.; Did you at any time or times and when in particular as the solicitor or attorney of the said J. G. receive the said exhibits respectively or either and which of them

EXHIBITS.

—  
To prove as exhibits the abstracts of title received by the witness as solicitor for the defendant.

EXHIBITS.

from any person or persons and whom by name, either on their or his own behalf or on the behalf of any and what other person or persons? And are the said exhibits respectively in the same state and condition in which they respectively were at the time you received the same from such person or persons or how otherwise? Declare, &c.

[ \*710 ]

*\*Interrogatories for examination of an accountant relative to an account made out by him of the dealings between deceased persons.*

*Outline of the plaintiff's case.*

G. G. the husband of the plaintiff was agent to D. defendant's husband in L., and as D. made remittances to G. who paid money for D. in the capacity of agent, an account was opened between them; G. died. The person to whom these interrogatories were administered was employed after G.'s death to settle the accounts between him and D., afterwards D. died. The plaintiff brought her bill praying an account, and alleging that a sum of money remained due to her from the estate of D.

1st. [*As to knowledge of the parties; see p. 688, antea.*]

To prove that witness was employed to make out the accounts; also to prove as exhibits the books delivered to him on the part of the plaintiff, which had been kept by her deceased husband.

2d. Were you or not ever and when employed by any and what person or persons and whom by name, to make out any account of the dealings and transactions between the said G. G. and T. D. in their respective life-times? And if yea, when did you receive from the said complainant any books papers or writings for such purpose, and particularly whether or not any and what books or book which were or was or appeared to have been kept by or for the said G. G. in his life-time for the purpose of making entries of any and what kind relating to dealings between him and the said T. D.? Look upon the books now produced, &c. Were or was the same or either and which of them ever and when delivered unto you by or on behalf of the said complainant for such purpose or on such occasion or for what other purpose or on what other occasion, and what do the same respectively purport to be? Declare, &c.

To prove applications made to the defendant's late husband for his books of account; also to prove the same as exhibits.

3d. Did you or not ever and when or about what time in any and what manner apply to the said T. D. to deliver or send up to you or furnish you with any books or book of account papers or paper matters or things for or towards enabling you to make out or assisting you to make out the account of dealings and transactions between the said G. G. and T. D., and did or not the said T. D. ever and when or in what manner deliver or send unto you any and what books or book of account papers or writings for such purpose or in consequence of such application? Look on the books papers and writings, &c. Were or was the same or any or either of them delivered or sent unto you by the said T. D. on such occasion or for such

purpose, and what do the same produced books papers and writings respectively purport to be? Declare, &c.

EXHIBITS.

4th. Did you or not ever and when draw out any account in writing of or concerning the dealings or transactions of all or any and what kinds which were had or passed between the said G. G. and T. D. for any and how long time or times and from and to what times? Did you or not previously to or in order to the drawing out of such account, carefully or otherwise and how examine inspect or peruse all or any and which of the books papers or writings which were \*delivered or sent unto you for such purpose by or on behalf of the said complainant and the said T. D. respectively or by or on behalf of either and which of them? Look upon the book or writing, &c. Is the same or not the account which, if any, was so drawn out by you, or a true copy thereof? Doth the said book or paper marked — contain a just and true account of all dealings and transactions between the said G. G. and T. D. for the time for which the same appears to be an account, or are there any and what errors omissions or false charges therein and for what reason? Point out all such errors omissions and false charges and how the same happened therein? Declare &c.

To prove as an exhibit the account made out by witness, or a copy thereof, and whether the same is true or false.

[ \*711 ]

5th. Whether or not was a copy of the account which, if any, was drawn out by you as is inquired after in the 4th interrogatory, at or about any and what time delivered or sent and by whom unto the said T. D.? Was the same or not a true copy of the said book or writing, &c. or did the copy which if any, was so sent or delivered, in any and what respect differ or vary from the said produced books or writings marked &c.? Declare, &c.

To prove that a copy of the account as made out by the witness was sent to the deceased husband of the defendant.

6th. Whether or not were any meetings had and how many in number between you and the said T. D. for or in order to the settling examining or considering of the said account which, if any, was drawn out by you as is inquired after in the 4th interrogatory? If yea, When or about what time and where were such meetings had, and how long were you and he together at each of such times? Did or not the said T. D. at all or any and which of such meetings with any and what degree of care or attention or otherwise and how, examine the whole or any and what part of such account and all or any and which of the articles therein; and were or not any and what books papers or writings inspected or examined by him and you or one and which of you at such meetings or either and which of them? Set forth what passed between you and the said T. D. at such meeting touching the settling or adjusting inspecting or examining of the said account or in any manner relating to the several items or charges therein, and how the said T. D. at such respective meetings expressed himself relating thereto; Did or did not the said T. D. at any time and which of such meetings or at any and what other time in any and what manner acknowledge or allow the said account or any and what particulars thereof to be just and true? And did he or not finally make any and what objections thereto, or to any and what articles matters or things in his favour and to what amount.

To prove meetings had by the witness with the husband of the defendant in order to the settling of the account drawn out, what passed thereat and what acknowledgements were made by him.

7th. *[To prove in evidence the acknowledgments made by the deceased husband of the defendant, in his own hand-writing, contained*

## EXHIBITS.

*in an account book; see the 3d interrogatory; inserted in p. 691, antea.]*

8th. [*To prove remittances of bills of exchange; the same interrogatory as inserted postea.]*

Lastly. [*The concluding general interrogatory; see p. 688, antea.]*

To prove the hand-writing

[\*712]

of and also to prove as an exhibit a diary or account

kept by a land

\* Do you know L. N. in the pleadings named, and how long and in what character were you acquainted with him, and can you [or are you able] by and what means [to] speak to his hand-writing? Declare the truth and your utmost knowledge remembrance and belief herein.

agent to a proprietor of extensive coal mines.

\* Look at the exhibit now produced and shown to you marked with the letter — and purporting to be a certain diary or account kept by the said L. N. between the months of January and October 1780; Whether or no is the same such diary or account, and in whose hand-writing is the said diary or account, and in what character or capacity was the same kept or written by the said L. N. or by any other and what person by name? Declare the truth, &c. [*ut supra.*]

To prove the signature to an agreement by some person acquainted with the parties hand-writing.

Look upon the paper-writing now produced and shown to you at this the time of your examination marked with the letter (A); Whether or no are you by any and what means acquainted with the character and manner of hand-writing of the said defendant I. D.? And whether or no is the name I. D. appearing to be set and subscribed to the said produced paper-writing of the proper hand-writing of the said defendant I. D, as you know or believe? Declare, &c.

To prove the signature of a deceased person to an agreement, by person acquainted with his hand-writing.

Whether or no were you acquainted with R. D. late of — but now deceased, and did you ever see the said R. D. write, or are you by any and what other means acquainted with the character or manner of hand-writing of the said R. D.? Look upon the paper-writing now produced, &c. whether or no is the name R. D. appearing to be set and subscribed to the said produced paper-writing marked (A) of the proper hand-writing of the said R. D. or as you know or believe? Declare, &c.

To prove witness's signature to an agreement as agent for or on behalf of the defendant; what passed previously to his signing the

Look at the paper-writing marked with the letter (A) and now produced, &c. Whether or no is your name appearing to be set and subscribed thereto for the said defendant of your proper hand-writing? If yea, when did you so set and subscribe your name thereto, and whether or no had you the instruction or direction of the said defendant to sign such paper or any such paper, or to make any such agreement or any other and what agreement with the said complainant; or did you at any time and when previously inform him or in-

\* intimate to him that you would on his part sign such paper or make any agreement to any such or what other effect with the said complainant, and did he approve of such your intention or how otherwise; or did you at any time and when at first afterwards inform him or in any and what manner intimate to him that you had such paper or made any agreement to any effect with the said complainant and did he approve thereof or how otherwise, or with what authority and with what intention did you so sign and subscribe the said paper writing or agreement? Set forth, &c.

EXHIBITS.

—  
same, and whether the defendant approved thereof.

\*\* Are you acquainted with the character or manner of hand-writing of the said M. S. and the said A. W. and J. W. or either and which of them? If yea, Look on the paper-writing now produced and shown to you at this the time of your examination marked with the letter (A) purporting to be an agreement between the said M. S. on behalf of the said A. W. and the said J. F. bearing date —, and at the names M. S. and J. F. thereunto subscribed, and declare whether the same be of the respective hand-writing of the said M. S. and J. F. as you know or for any and what reason believe? And look at the name A. G. set and subscribed as an attesting witness to the execution of the said agreement, and is the same of your proper hand-writing, and did you see the execution of the said agreement by the said M. S. and J. F. or either and which of them? And look at the memorandum indorsed on the said agreement purporting to be a ratification of the said agreement by the said A. W. and the name of A. W. thereunto set and subscribed; Is the said name of the proper hand-writing of the said A. W. as you know or for any and what reason believe? Declare, &c.

[ \*713

To prove the execution of an agreement which had been signed by the agent of one of the parties thereto;

And the memorandum indorsed signed by such party, ratifying the act of her agent.

\* Do you know the character and manner of hand-writing of —? If yea, look upon the exhibits now produced and shown to you at this the time of your examination marked respectively — and purporting to be bills of exchange and promissory notes drawn indorsed or accepted by the said —, and look at the names — thereon respectively written as drawer indorser or acceptor of the said bill or bills of exchange promissory note or promissory notes or some and which of them; Are the names — thereon respectively written of the proper hand-writing of the said — as you know or for any and what reason believe? Declare, &c.

To prove bills of exchange, promissory notes, &c.

Look upon the bond or paper-writing now produced, &c. whether or no was the said produced writing at any time and when signed sealed and delivered or in any and what manner executed by any person and whom in your presence? And is your name set and subscribed as a witness thereto of your proper hand-writing, or whether or no were you acquainted with any person or persons whose name or names appear to be set or subscribed to the said bond or paper-

To prove the execution of a bond of a subscribing witness, or if dead by persons acquainted with the hand-writing

## EXHIBITS.

of the sub-  
scribing wit-  
ness or wit-  
nesses.

writing as a witness or witnesses thereto? And did you ever see such person or persons write, or were you by any and what other means acquainted with the character or manner of hand-writing of such person or persons? And is or are the name or names of such person or persons so set and subscribed to the said bond or paper-writing of his her or their proper hand-writing? And whether or no is or are such person or persons now living or dead, and if dead, when and where did he she or they die as you do for any and what reason know or believe? Set forth, &c.

[ \*714 ]

\*Interrogatories to be exhibited, &c. [see p. 685, *antea*,] in a cause wherein J. L. the elder and J. L. the younger are plaintiffs, and E. T. and J. G. are defendants, on the part and behalf of the said complainants.

1st. [*The general interrogatory as to knowledge of parties ; see p. 688, ante.*]

To prove the preparing a bond by witness as solicitor to a person since dead, for securing payment of a sum of money by the plaintiffs; also to prove the bond as an exhibit; the objection taken by them to the bond being prepared as a common money bond; also to prove as an exhibit the minute made by witness of the actual consideration of the bond and by whose desire, or to prove the contents and purport thereof.

To prove the witness's attestation of the bond, and what conversation passed between the plaintiffs and

2d. Whether or no were you in the year — employed by T. C. late of — in the county of — but now deceased and in the pleadings in this cause named as his attorney? Whether or no did you in that character or otherwise at any time and when in or about the month of — prepare a bond to be executed by the said complainants for the payment of the sum of —*l.* to the said T. C. Look upon the paper-writing now produced, &c.; Whether or no is such paper-writing the said bond so prepared by you as aforesaid? Whether or no did the said complainants or either of them in the presence of the said T. C. or otherwise object to the said bond being prepared as a common money bond, and for what reason and what passed thereupon between the said complainants or either of them and the said T. C. or yourself, and whether or no were you at any time and when desired by any person and whom and in whose presence to make a minute in writing of the actual consideration of the said bond, or to any such or the like and what effect, and whether or no did you make any such minute and whether or no with the consent or in the presence of the said T. C. and whether or no did you then or at any time and when read over such minute to or in the presence of the said T. C., and the said complainants or either of them; and did the said T. C. make any and what observation thereupon? Look upon the paper-writing now produced, &c. Whether or no is the said paper-writing the minute so written by you as aforesaid, or what hath become of such minute, and set forth the contents and purport thereof to the best and utmost of your recollection and belief? Declare, &c.

3d. Look upon the paper-writing now produced, &c. Whether or no is your name set and subscribed as a witness thereto of your proper hand-writing? When and where and in whose presence did you so set and subscribe your name as a witness thereto? Whether or no previously to the execution of the said bond did any conversation pass between the said complainants or either of them and T. C. in

the said bond named, as to the consideration of the said bond? If yea, Set forth the particulars of such conversation and what was said thereon by the said T. C. and the said complainants or either of them or any other person or persons to or in the presence or hearing of the said T. C.? Declare, &c.

EXHIBITS.

the obligee as to the consideration of the bond.

Lastly. [*The last general interrogatory; see p. 688, antea.*]

*Observations.*—The bill charges the bond to have been given for the purchase of T. C.'s interest in two farms, — farm and — farm. By the answer it appears that T. C. had not at the time — farm, and there is therefore a plain mistake in the bill which ought to be amended before the replication is filed. The motion to amend \*should be amending defendant's office-copy, and requiring no further answer and will create therefore no delay. Inquiry ought to be made of Mr. H. as to this minute in writing. If he has it he must be served with a subpoena *duces tecum* to produce it upon his examination. If he delivered it over it may be necessary to give notices or to take other measures before parolevidence can be given by Mr. H. of its contents.

[ \*715 ]

Look upon the two bonds or paper-writings now produced and shown to you at this the time of your examination marked with the letters (A) and (B); Whether or no were or was the same or either and which of them made and executed by you at the times they respectively bear date or when else and under what circumstances and for what considerations respectively, and on what terms and conditions were you articulated as a clerk to the testator W. G. in the pleadings in this cause named? Declare, &c.

To prove the execution of two bonds, and under what circumstances.

\* Whether or no was any case during the life of the said Sir T. B. submitted to any and what counsel or other legal person and whom by name for his advice and opinion upon any matters relating to the said memorandum of agreement or release or either and which of them, and if yea, by whom was such case so submitted and by whose authority and directions and what were the points thereby submitted for such opinion and advice? Set forth, &c.

To prove that a case was laid before counsel, and by whom, and the points submitted for counsel's opinion.

\* Look upon the exhibit or paper-writing now produced and shown to you marked with the letters Z. Z. and purporting to be a case stated by you the before-named M. S. for the opinion of C. S. esq. formerly of Bream's Buildings, with his opinion thereon, dated the 24th day of August 1790; Whether or no are the same such case and opinion respectively and by whom was the said case drawn up and prepared and in whose hand-writing is the same, and is the opinion thereunder written in the hand-writing of the said C. F. or was the same written by his authority and dictation as you do for any and what reason know or believe, and did you receive the same in answer to the case so submitted to the said C. F. as aforesaid;

To prove as an exhibit the case which was laid before counsel, with his opinion thereunder written;

## EXHIBITS.

Also to prove whether witness, by the direction of a deceased person, or of his own suggestion, laid any other case before counsel relative to the matters before submitted to counsel.

And whether or no did you or any other person being the agent of or in any manner employed by the said Sir T. B. or by the said defendants or either of them prior to or in the month of September, 1790, submit any other case than that set forth in the last mentioned exhibit upon any other question concerning the said memorandum of agreement and release or either and which of them for the opinion and advice of the said C. F. or any and what other counsel or legal person for his advice or opinion; And whether or no did you state such case and take such opinion of your own authority or suggestion or by any direction from the said Sir T. B. for that purpose; And whether or no did he ever know of such opinion being taken or hear or see the same? Set forth, &c.

[\*716]

To prove a catalogue of sale as an exhibit.

\* Look upon the paper or exhibit now produced and shown to you at this the time of your examination marked (A): From whom and upon what occasion did you receive the same, and was the same delivered to you or to any other person to your knowledge or belief and by whom as a particular or catalogue of any and what sale? Declare, &c.

To prove the contents of an exhibit.

Whether or no doth the said produced writing marked A. contain the words following or any and what other words that is to say; [*Setting out the instrument verbatim.*] Have you or not at any time and when and with whom examined and compared the said produced writing with the words set forth in this interrogatory as being a copy thereof? Declare, &c.

To prove as an exhibit the copy made by witness by the direction of a deceased person, of an account which had been delivered to him of moneys owing by him; in what language the account and the copy thereof were written; the observations which the deceased wrote on the copy, and in what language; and requiring the witness to

\* Whether or no did the said defendant C. L. as you do for any and what reason believe deliver or cause to be delivered unto the said S. D. in his life-time a written account or any writing purporting to be an account of some debt or debts or sum or sums of money that was or were due or owing by or from the said S. D. to the said defendant C. L.? If yea, In what character and language was such account or writing written or made out, and when or about what time was the same delivered to the said S. D. and what was or were the particular or particulars of such debts or debt sum or sums of money, and how much did the same amount unto in the whole as you know remember or believe? Whether or no did the said S. D. as you know or do for any and what reason believe peruse or examine the said account? Did or did not the said S. D. ever deliver the said account to you; If yea, When or about what time and for what purpose did he deliver the said account to you? Did you or did you not by the order or direction of the said S. D. or otherwise and how at any time and when make or write a true copy of the said account? If yea, In what language and character and for what purpose was such copy made or written, and was or was not such copy at any time and when and by whom delivered to the said S. D.? And did or did not the said S. D. at any time or times and when peruse or



examine the said copy, and did he or did he not in his own hand-writing or otherwise and how and in what language and character and at or about what time or times make or write any and what minutes memorandums or observations on the said copy? Whether or no is the paper-writing marked with the letter (B) and now produced by you, or any and what parts or part thereof of your own hand-writing? If yea, How much or what part or parts thereof is or are of your own hand-writing? And how much and what part or parts thereof is or are of the hand-writing of any other person or persons and whom as you know or do for any and what reason believe? Is or is not the said paper-writing marked with the letter (B) the copy which was made or taken by you of the aforesaid account? If yea, Translate the said paper-writing marked with the letter (B) \*and all the minutes memorandums and observations written or made thereon into and set forth the same in the English language, and in making such translation distinguish and point out the English of so much or of such part or parts of the said paper-writing as was or were written by you, and also the English of so much or of such part or parts of the said paper-writing as was or were written by any other person or persons and whom? Declare, &c.

EXHIBITS.

—  
translate the copy, distinguishing his own and the deceased's hand-writing.

[ \*717 ]

Look upon the said paper-writing or agreement now produced, &c.; Whether or no did you at any time and when and where deliver to the said defendant any paper-writing purporting to be a copy of the said paper-writing, and was the same a true copy thereof? And whether or no did you at the time of delivering such copy produce to the said defendant the said original paper-writing or read the same to him, and did anything and what pass between you and the said defendant thereupon? Declare, &c.

To prove a copy of an agreement having been delivered to the defendant.

\* Look upon the exhibit now produced and shown to you at this the time of your examination marked —; Is or not the same the copy made or caused to be made by you of the said draft lease previously to the alterations made therein? And is or not the said exhibit a true and exact copy of such draft lease previously to such alterations? Declare, &c.

To prove as an exhibit a copy of a draft previously to any alterations being made therein.

\* Look upon the paper-writing or exhibit now produced and shown to you at this the time of your examination marked with the letter —; Did you compare or examine the same with any and what books or book of the Governor and Company of the Bank of England or with any and what book or books entry or entries or not? If yea, Does the same contain a true copy of such book or books entry or entries with which you so examined or compared the same or not? Declare, &c.

To prove a copy of an entry of stock in the Bank stock books.

## EXHIBITS.

To prove a  
copy of a  
court roll.

Look upon the parchment-writing now produced, &c. purporting to be a copy of a court roll; Did you at any time or times and when carefully examine the same with the court roll to any and what manor by name? If yea, is the same a true copy of the court roll of which the same purports to be a copy as you know or believe? Declare, &c.

To prove as  
an exhibit a  
copy made of  
entries on the  
court rolls (in  
proving the  
customs of a  
manor.)

[ \*718 ]

Look upon the paper-writing now produced and shown to you at this the time of your examination marked with the letter (A); Did you at any time or times and when and where examine the same with any entries or entry thereof made in the court rolls or court books of \*the manor of M. in the county of H. and are or is the same or any and which of them true copies or a true copy of such entries or entry? Declare the truth and your knowledge herein.

To prove cop-  
ies of entries  
on the court  
rolls.

Look upon the paper-writings now produced and shown unto you at this the time of your examination marked with the letters A., B., &c.; Whether or no did you at any time and when and where examine the same with any entries thereof made in any and what court rolls of the manor of K. in the pleadings in this cause mentioned; And whether or no are the same true copies of such entries? Declare, &c.

To prove a  
copy of an en-  
try in a parish  
register book.

Look upon the paper-writing now produced, &c. Did you at any time and when and where carefully examine the same with any entry thereof made in the register book of any and what parish or place? If yea, Whether or no is the same a true copy of such entry? Declare, &c.

To prove cop-  
ies of entries  
in register  
books of  
births, buri-  
als, &c.

Look upon the paper-writings now produced and shown to you at this the time of your examination marked respectively with the letters A., B., &c.; Whether or no did you at any time and when and where carefully examine the same with any entries thereof made in the register books of any and what parishes or places and are the same true copies of such entries respectively? Declare, &c.

To prove cop-  
ies of entries  
in registers of  
baptisms, bu-  
rials, &c.

In whose cus-  
tody the regis-  
ters were, to  
whom the en-  
tries relate,  
and by what  
means witness  
was acquaint-  
ed with them.

\* Look upon the writings now produced to you marked No. 1, &c. What do the same severally purport or appear to be? Did you ever and when examine the same or any and which of them with any and what registers or register of baptisms or burials kept in any and what parish or place? If yea, When did you so examine the same, and in whose custody or power were or was such registers or register respectively? Are or is such produced writings true copies or transcripts of any and what entries in such registers or register concerning any and what person or persons, and who is or are or was or were such person or persons respectively as you know or for any and what reason believe, and particularly were you ever and when and by what means acquainted with such person or persons respectively? Declare, &c.

\* Look upon the paper-writings now produced and shown to you at this the time of your examination marked respectively with the letters —; Did you compare and examine them or either and which of them with the register books of or kept for any and what parishes or places, and are they or is either and which of them true copies or a true copy of any and what entry or entries in any and which of such register books as you know or for any and what reason believe? And do any or either and which of such exhibits as you for any and what reason know or believe relate to the births marriages or deaths of any or either and which of the persons mentioned in the pleadings of this cause? And what degree of relationship did \*such persons respectively bear to the said intestate J. N.? Declare, &c.

EXHIBITS.

To prove copies of entries in parish registers as relating to persons mentioned in the pleadings, and the degree of relationship which such person bore to a deceased person.

[ \*719 ]

What is the proper Ecclesiastical Office for the probate of wills of persons dying in the parish of W., commonly called — in the county of W.? Whether or no have you carefully examined such office for the purpose of finding wills of J. C. late of, &c. who died in or about the year —, and of T. C. late of —, who died in or about the year —? If yea, Have you found any will of the said J. C. or of the said T. C. or either and which of them, or doth it appear that administration of the goods chattels rights and credits of the said J. C. or of the said T. C. was at any time and when granted to any person or persons and whom? Look upon the paper-writings now produced and shown to you at this the time of your examination marked with the letters A. B., &c.; Whether or no are the same true copies of entries in the register books of the said Ecclesiastical office? Set forth, &c.

To prove search made for wills of particular persons, and discovery made of grants of letters of administration to their estates; also to prove copies of entries in the register books of the Ecclesiastical Office.

\* Did you at any time and when receive any and what hand-bills from any person or persons and whom by name relating to or for the discovery of A. G. in the pleadings of this cause named? If yea, Look upon the exhibit now produced and shown to you at this the time of your examination; Is the same a true copy of such hand-bills as you know or for any and what reason believe, and did you distribute or cause to be distributed any and what number of such hand-bills of which the said exhibit is a copy in any and what place or places and by any and what means? Declare, &c.

To prove as an exhibit a copy of hand-bills distributed for the discovery of a person.

Look upon the paper-writings now produced and shown to you at this the time of your examination marked respectively with the letters F., G., &c.; Whether or no did you at any time and when and where carefully examine the same with any writings or inscriptions upon any and what tomb-stones or monuments in any and what churches or church-yards? If yea, Whether or no are the same true copies of such writings or inscriptions respectively? Declare, &c.

To prove copies of inscriptions on tomb-stones.

## EXHIBITS.

To prove the  
copy of a  
judgment.

[ \*720 ]

\* Look upon the paper-writing now produced and shown to you at this the time of your examination marked —, and purporting to be a copy of a judgment in his Majesty's Court of — at Westminster, in a certain cause in which — are plaintiffs and — defendants. Did you compare and examine the said paper-writing with any and what record or roll, and where did you so \*examine and compare the same, and is the same a true copy of such record or judgment? Declare, &c.

To prove cop-  
ies of judg-  
ments.

\* Look upon the paper-writings now produced and shown to you at this the time of your examination respectively, marked with the letters —, and respectively purporting to be copies of judgments in his Majesty's Court of — at Westminster against the said E. F. Did you compare or examine all or either and which of such paper-writings or writing with any and what record or roll, and where did you so examine or compare the same or either and which of them, and are or is the same or either and which of them true copies or a true copy of such records or record or judgment or judgments respectively? Declare, &c.

To prove the  
copy of an in-  
quisition of lu-  
nacy, and of  
the order di-  
recting a tra-  
verse.

[The commis-  
sion of lunacy  
being under  
the great seal  
proves itself.]

\* Look upon the paper-writings or exhibits now produced and shown to you at this the time of your examination marked respectively —. Did you compare and examine both or either and which of such exhibits with any and what original filed or kept in any and what office? And when did you so examine and compare the same or either and which of them respectively, and are they or is either and which of them respectively true copies or a true copy of such originals respectively? Declare, &c.

To prove as  
exhibits cop-  
ies of maps  
or plans and of  
a book of re-  
ference, the  
originals  
whereof were  
directed by  
Act of Parlia-  
ment to be de-  
posited in a  
particular of-  
fice;  
also to prove  
that a piece of  
land and stone  
quarry were  
comprised in  
the original  
maps.

\* Have you or not ever and when examined the maps or plans and book of reference mentioned and referred to in and by the Act of Parliament in the pleadings in this cause mentioned? If yea, Where were such maps or plans and book of reference then kept or deposited? Look upon the maps or plans and book of reference now produced and shown to you at this the time of your examination marked with the letters —; Are or is such last-mentioned maps or plans and book of reference or either and which of them so far as the same relate to the piece of ground mentioned or described in the said original maps or plans and book of reference mentioned or referred to in and by the said Act of Parliament as No. 15 in the parish of —, true and correct copies or a true and correct copy of such original maps or plans and book of reference? And have you or not at any time and when examined the same with such original maps or plans and book of reference? Were or not the said piece or parcel of land and quarry in the preceding interrogatory mentioned comprised or included in the said original maps or plans and book of reference under the said description of No. 15 in the parish of — at the

time of the passing of the said Act of Parliament as you know or do for any and what reason believe? Declare, &c.

EXHIBITS.  
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\* Look upon the exhibit now produced and shown to you at this the time of your examination marked with the letter —; Is the \*said exhibit a true copy of any and what original paper, and did you or not at any time and when compare the said exhibit with any and what original paper? And did you or not at any time and when in particular serve upon or deliver to any and what person or persons upon any and what occasion and by whose order or direction, the said original paper of which the said exhibit is a true copy, and what did such person or persons say at the time of the service or delivery of such original paper, and by whom was such original paper signed, and how do you know who signed such original paper? Declare, &c.

To prove the copy of a notice, and when such notice was served, by whose direction, and by whom signed.  
[ \*721 ]

\* Look upon the parchment or paper-writings produced and shown to you at this the time of your examination marked respectively with the letters A. &c.; Whether or no do or doth the same or any or either and which of them contain a true copy or copies of any and what record or records of any and what court or courts of any and what original or originals of which the same do or doth purport to be a copy or copies? Have you or not carefully examined or compared the said produced papers or writings or either and which of them, with such, if any record or records or other original or originals, and when where and with whom? Declare, &c.

To prove copies of records.

\* Look upon the paper-writings now produced and shown to you at this the time of your examination, and marked with the letters —; What do the same severally purport or appear to be? Are or is the same or any and which of them true copies or transcripts or a true copy or transcript of the whole or any and what part of any and what original writings or writing, and did you examine and compare the said produced writings or any and which of them, and in whose custody or power were such original writings respectively or any and which of them at the time you so examined and compared such produced writings therewith respectively? What did such original writing purport or appear to be? Declare, &c.

To prove copies of original writings, and in whose custody the same were, and the purport thereof.

\* Look upon the exhibit now produced and shown to you at this the time of your examination marked with the letter (B); Is or not such exhibit a true copy of any and what register or enrolment of any and what deed in any and what office for registering of deeds in any and what county? And did you or not compare such exhibit with any and what record or original enrolment in any and what office for the registering of deeds in any and what county? And do

To prove the registering of a deed by a copy of the registry, and the indorsement of such registration on the exhibit.

EXHIBITS.

you or not know when such enrolment was made? And is not such register or enrolment the register of the said exhibit marked (A) in the preceding interrogatory mentioned and referred to? And is not such register or enrolment indorsed on the said exhibit marked (A) and is or not the said indorsement a true copy of the registry of the said deed in the registry book for any and what county? Declare, &c.

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[ \*722 ]

To prove as an exhibit a counterpart of a lease, and that the same corresponded with a former lease of the same premises.

\* Look at the parchment-writing now produced and shown to you at this the time of your examination marked with the letter (B) purporting to be a counterpart copy of a lease from the said A. W. to the said J. H. bearing date the — day of —; Did you or did you not examine the said counterpart with any and what deed from — to J. K. of —, and is or not the said parchment-writing a true copy of the same? Declare, &c.

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To prove a corporation seal affixed to a deed.

\* Do you or not hold any and what office under the Ecclesiastical Corporation of the Dean and Chapter of the Cathedral Church of the Blessed Virgin Mary of S.? If yea, Do you or not know the common seal of and which is used by the said Corporation? If yea, Look at the exhibit marked — and now produced and shown to you at this the time of your examination, and look at the seal thereto affixed and annexed: Is the said seal the common seal of the said Corporation of the Dean and Chapter of the Cathedral Church of the Blessed Virgin Mary of S.? And if yea, By whose order direction and authority and when and by whom was the said seal affixed or annexed to the said exhibit as you know or for any and what reason believe? Declare, &c.

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To prove the debt due to the plaintiff according to the particulars contained in an exhibit.

\* Was or not the said testator J. M. deceased at the time of his death justly and truly indebted to the said complainant in any and what sum or sums of money on simple contract? If yea, Look upon the paper-writing now produced and shown to you at this the time of your examination marked —; Does or not the said paper-writing contain a just or true account of the particulars of such debt or debts, and are or not the charges therein contained fair and reasonable as you know or for any and what reason believe? Declare, &c.

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To prove the execution of a deed by the subscribing witness.

Look upon the deed or writing now produced, &c.; Whether or no was such deed or writing at any time and when signed sealed or delivered in your presence by any person or persons and whom? And were you a subscribing witness to the signing sealing or delivery thereof by such person or persons? And is your name indorsed and set as a subscribing witness thereto of your proper hand-writing? Declare, &c.

\*Look upon the [paper *or*] parchment-writing now produced and shown to you at this the time of your examination marked with the letter (A) and purporting to be a settlement made on the marriage of the said J. B. with the said A. R.; Did you or not see the same signed sealed and delivered and by whom respectively and when and where and in whose presence? And look upon the names — subscribed thereto; Are such respective names of the respective \*hand-writing of the said — ? And look upon the names — signed as witnesses to the said exhibit; Is either and which of those names of your proper hand-writing, and did you see either and which of the said other witnesses write their names as witnesses thereto, and were you and such other witnesses present at the time the respective parties or either and which of them signed sealed and delivered the said deed? Declare, &c.

EXHIBITS.

—  
To prove a marriage settlement by the subscribing witnesses.

[ \*723 ]

\*Look upon the exhibit now produced and shown to you at this the time of your examination marked with the letter (A), and look upon the indorsement on the back of the said exhibit; Did you or not at any time and when see the said exhibit sealed and delivered by any and what person or persons and delivered as the act and deed of any and what person or persons and whom by name? And did you or not see the indorsement or acknowledgment at the back of the said exhibit signed and by whom, and did you or not see the money in the said acknowledgment mentioned to have been received paid and by and to whom? And are the names — indorsed and set as one of the subscribing witnesses to the sealing and delivery of the said exhibit and the receipt of the said consideration-money of your own proper hand-writing? And are the names and characters — indorsed and set as the names of the other subscribing witnesses attesting the sealing and delivery of the said exhibit and the receipt of the said consideration-money of the proper hand-writing of the said — or whom else, and did you see the said — set his name as a subscribing witness to the due execution of the said exhibit and the receipt of consideration-money? Declare, &c.

To prove the execution of a deed and payment of the consideration money by the subscribing witness.

\*Look upon the exhibit or exhibits now produced and shown to you at this the time of your examination marked —, and look upon the indorsement on the back of the said exhibit or exhibits respectively; Did you or not at anytime and when see the said exhibit or exhibits or either and which of them sealed and delivered by any and what person or persons and delivered as the act and deed of any and what person or persons and by whom respectively by name? And did you or not see the indorsement or indorsements acknowledgment or acknowledgments at the back of the said exhibit or exhibits and either and which of them signed by any and what person or persons and by whom by name, and were you or not a subscribing witness to the sealing and delivering of the said exhibit or exhibits or either and which of them by any and which of the parties thereto, and to the signing of the receipt or receipts for the said consideration-money by any and what person or persons, and is your name set or subscribed as such witness to such sealing and delivering and to such receipt

General interrogatory to prove the execution of one or more deeds by the subscribing witnesses, and the signatures to the receipts indorsed.

[Where the instructions furnished are not sufficiently accurate.]

EXHIBITS.

[ \*724 ]

respectively of your own hand-writing, and is or are the name or names of the other subscribing witness or witnesses attesting the sealing and delivering of the said exhibit or exhibits or either and which of them or the receipt or receipts of the said consideration-money of the proper hand-writing of such respective witnesses or either and which of them, and set forth how and by what means you are acquainted with the character or manner of hand-writing of the said other witnesses to the said exhibits or either and which of them, and did they or \*either and which of them sign and attest the execution of the said exhibit or exhibits and either and which of them by any and what person or persons and the indorsement on the back thereof by any and what person or persons in your presence? Declare, &c.

To prove the execution of deeds, and the signature to a receipt indorsed on the back of one of them.

Look upon the deeds or parchment-writings now produced, &c. ; Whether or no were or was the said produced writings or either and which of them at any time and when signed sealed and delivered or in any and what manner executed by any persons or person and whom in your presence, and is your name set and subscribed as a witness thereto of your proper hand-writing? Look upon the writing indorsed upon the back of the said deed or parchment-writing marked (B) and purporting to be a receipt for the sum of —£. ; Whether or no was such writing so indorsed at any time and when signed by any person and whom in your presence, and is your name set and subscribed as a witness thereto of your proper hand-writing? Set forth, &c.

To prove as an exhibit a lease which had been tendered to the defendant; also to prove applications made to him to accept the lease and execute a counter-part, and the reasons of his refusal.

[See the first interrogatory in p. 724, ante.]

To prove certain letters as having been written by the witness, and the receipt of the sums therein mentioned.

\*Look at the parchment-writing now produced and shown to you at this the time of your examination marked with the letter (C), purporting to be a lease from the said complainant A. W. to the said defendant, and bearing date —? Did you or not at any and what time and by whose order or direction tender the said lease and the counterpart in the preceding interrogatory mentioned or either and which of them to the said defendant, and did you or not at any and what time and by whose order and direction request the said defendant to accept the said lease and execute the said counterpart, and did or did not the said defendant refuse to comply with such requests or either and which of them and for what reason as you know or for any and what reason believe? Declare, &c.

Look upon the paper-writings now produced, &c. Whether or no were or was such produced writings or either and which of them or any and what part thereof, or the name H— P— appearing to be set and subscribed thereto of your proper hand-writing? And whether or no did you duly receive the several sums therein respectively mentioned or any and which of them according to the purport and effect of the said paper-writings or either of them? Declare, &c.

To prove a let-

Look upon the paper-writing now produced and shown to you at



this the time of your examination marked with the letter (A); Of whose hand-writing is the said paper-writing and the name R. R. set and subscribed thereto, and the superscription or direction thereof as you know or for any and what reason believe? Who acted as the solicitor or solicitors of the said complainant with respect to the purchases in the said bill of complaint mentioned? And whether or no did the said R. R. in any and what manner act with respect to the said purchases on the part and behalf of any and which of the said defendants? Declare, &c.

EXHIBITS.

ter written by the solicitor of the defendants to the plaintiff's solicitor.

\* Look upon the letter or paper-writing now produced, &c.; [ \*725 ] Whether or no is the said produced letter or paper and the signature thereto and the direction thereof or either and which of them of your proper hand-writing or of the proper hand-writing of any person and whom employed by you, or was such letter or paper-writing written by any person and whom by your direction and instruction or with your approbation or privity, and what was your motive or inducement for such letter or paper-writing being written and sent by you or by your direction or instruction or with your privity or approbation, and did not such motive or inducement equally apply to the said defendant T. B., and if not why? Declare, &c.

To prove a letter as being in the witness's own hand-writing, or as having been written or sent by his direction, and the motive or inducement for writing it.

\* Are you or not by any and what means acquainted with the character or hand-writing of L. N. in the pleadings of this cause named? Look upon the paper-writing or letter now produced and shown to you at this the time of your examination marked with the letter (A), and purporting to be a letter written by L. N., and bearing date the 31st day of October 1789; In whose character or hand-writing is the said letter written, and in whose character or hand-writing is the name L. N. signed or subscribed thereto, and when and upon what occasion was the said letter written? Is or is not Mr. J. to whom the said letter purports to be directed the said defendant J. J.? Whether or not did the said J. J. ever receive the said letter? Whether or not did you know or were you by any and what means acquainted with the said L. N.? If yea, How long did you know him, and whether or not was he the steward or agent of Sir T. B. in the pleadings in this cause named? Whether or not do you know the reason why or what it was that induced the said L. N. to write the said letter? If yea, Whether or not was the said letter written on account of or in consequence of any applications made to the said Sir T. B. or to the said L. N. respecting the purchase of the coals in the said letter mentioned? If yea, Set forth when and by whom such applications were made and the purport and effect thereof, and all the particulars relating thereto; Set forth the situation of the lands under which the coals lay which were the subject of such applications? What do you understand to have been the meaning of the words "Cold Harbor, &c. at Wibsey" in the said letter contained? Do you know or can you set forth whether or not the said defendant J. J. or the said J. H. the elder after the said 31st of October 1749 had any interview or meeting with the said Sir T. B. or with the said L. N. for the purpose of treating respecting the pur-

To prove a letter as an exhibit; the hand-writing and signature and the occasion of its being written; that it was written to one of the defendants, that he received the same.

Also to prove how long witness was acquainted with the person who wrote the letter; that he was steward to Sir T. B.; the reason which induced him to write the letter; that it was in consequence of applications to purchase certain coal lands and by whom made; The meaning of a particular expression in

## EXHIBITS.

the letter; and whether any meeting took place respecting the purchase of the coals, and what passed thereat.

To prove two letters as exhibits, and the hand-writing, signatures,

[ \*726 ]

and super-  
scriptions,  
and to whom  
addressed,  
and his situa-  
tion in life;  
also to prove  
the hand-wri-  
ting of an in-  
dorsement on  
the back of  
one of them,  
and whether  
the exhibits  
are the origi-  
nal letters or  
copies or ex-  
tracts there-  
from.

\* Look upon the exhibits now produced and shown to you at this the time of your examination marked respectively with the letters —, and purporting to be letters addressed by you to some person and whom by name, and dated respectively 18th March 1811, \*and the 19th day of April in the same year; In whose hand-writing are the said two exhibits respectively and especially the signature and superscription, and to whom by name were the same respectively addressed and sent and by what means, and what was the situation or employment of the person to whom the said respective letters were so directed and sent, and by what means are you enabled to state that the same respectively were addressed and written to such persons; and in whose hand-writing is the indorsement on the back of the said exhibit dated the 19th of April 1811, and by what means are you enabled to state the same? And whether or no are or is the said exhibits respectively or either and which of them the original letters or letter addressed and sent by you as in the former part of this interrogatory mentioned or a copy or copies thereof or extract or extracts therefrom, and how do you know and are you enabled to state the same? Declare the truth together with your means of knowing and reasons for believing the same.

To prove a notice sent to the plaintiff's solicitor by the solicitor for the defendant, and the hand-writing signature, and address.

Look upon the paper-writing now produced and shown to you at this the time of your examination marked with the letter (B); Of whose hand-writing is the said paper-writing and the signature thereto and the superscription thereof? Whether or no was the said paper-writing sent to the said complainant or any person and whom on his behalf at any time and when by you or by your direction? And whether or no were you employed as the solicitor or attorney of the said defendants R. R. and C. his wife and R. W. or any or either and which of them in the matter of the purchases made by the said complainant and in the said bill mentioned? Declare, &c.

To prove service of notices upon the plaintiffs, by whom signed, and the contents thereof; also to prove as an exhibit a copy made

Whether or no did you at any time in or about the year —, and on or about what day or days in particular deliver to the said complainants respectively or either and which of them and where, any and what writing purporting to be a notice from the defendant of her desire that the defendant should not be disturbed in the possession of any and what house, or to any such or the like effect? Was or not the name of the defendant subscribed thereto or to either and which of them? Were both such notices or writings in the same words and

figures or in any and what respect different from each other? Did you or not keep a copy of each or either and which of such notices or writings which if any were or was so delivered? Look upon the paper-writing now produced and shown to you at this the time of your examination marked with the letter (B); is the same or not a true copy of each or either and which of the notices or writings which if any were or was so delivered? Did you or not ever examine and compare the said produced writing with the notices or writings so delivered or with either and which of them? Declare, &c.

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by witness of the notices.

\* Look at the exhibit now produced and shown to you at this the time of your examination marked (A); Is or not the same the particular \*which was produced by the vendor or the agents of the vendor at the time of the sale of the premises in the pleadings of this cause mentioned? And is or not the said exhibit the particular by which the said premises were sold, and was or not the said exhibit read to the company present at the said sale, and was or not the same declared to the said company to be the particulars and conditions of sale. Declare, &c.

To prove a printed particular of sale

[ \*727 ]

as the one by which premises were sold by auction.

Look upon the paper-writing now produced, &c. and purporting to be a promissory note for —£. from A. B. deceased in the pleadings of this cause named to the said complainants, and bearing date the — day of —; Whether or no did you ever see the said A. B. write, or are you by any other and what means acquainted with the character and manner of his hand-writing? And whether or no is the name A. B. appearing to be set and subscribed to the said produced paper-writing of the proper hand-writing of the said A. B. as you for any and what reason know or believe? Declare, &c.

To prove a promissory note.

\* Look at the exhibits now produced and shown to you at this the time of your examination marked respectively A. B. C., and look at the names respectively signed to such exhibits; Do you know the parties whose names respectively appear to be set or subscribed to the said respective exhibits, and are you by any and what means acquainted with the character or manner of hand-writing of either and which of them respectively? If yea, Of whose hand-writing is or are such exhibit or exhibits, and in particular of whose respective hand-writing is or are the respective names set or subscribed to such respective exhibits? Set forth the reasons on which you form your belief; Declare, &c.

To prove receipts by persons acquainted with the hand-writing of the party signing the same.

Look upon, &c. Whether or no were or was any and what receipts or receipt indorsed thereon or on any or either and which of them at or about any and what times or time by any and what persons or

To prove receipts indorsed on deeds by the sub-

EXHIBITS.  
 ———  
 scribing wit-  
 ness.

person in your presence? Are you or not a subscribing witness to the signing of all or any or either and which of such receipts by all or any or either and which of such persons, and of whose hand-writing is your name now appearing to be set or subscribed as a witness to all or any and which of such receipts. Declare, &c.

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To prove a  
 will by the at-  
 testing wit-  
 nesses.

[ \*728 ]

Look upon the paper or parchment-writing now produced and shown to you at this the time of your examination marked with the letter (A) and consisting of — sheets or skins; Whether or no was the said produced writing at any time and when signed sealed published and declared by W. H. late of — the testator in the pleadings in this cause named, as and for his last will and testament in your presence and in the presence of any other person or persons \*and whom by name; or did the said testator in any other and what manner execute the said produced writing, or acknowledge the same as and for his last will and testament in your presence and in the presence of any other person or persons and whom? Whether or no is your name and the name or names of the other person or persons set or subscribed as a witness or witnesses thereto, of your his or their proper hand-writing respectively? And whether or no did you and such other person or persons or either and which of you set or subscribe your name or names as a witness or witnesses thereto in the presence of the said testator? And whether or no is or are such subscribing witness or witnesses now living or dead? And if any or either of them are or is dead, where and when did such witness or witnesses die as you for any and what reason know or believe, and if any or either of them are living, where do they respectively or where doth he reside? Whether or no was the said testator at the time of his signing sealing publishing and declaring the said produced writing as and for his last will and testament, or otherwise executing or acknowledging the same, of sound and disposing mind memory and understanding, or how otherwise, as you for any and what reason know or believe? Set forth, &c.

[ *Or thus:* ]

\* Look upon the paper-writing now produced and shown to you at this the time of your examination marked with the letter (A); Did or not the said testator J. M. deceased sign seal publish and declare the said paper-writing as and for his last will and testament in the presence of you and of any other and what person or persons, or are you or not a subscribing witness to such the signing and publishing or execution of the said will by the said testator J. M. and are or not the several names set or subscribed as witnesses to the signing and publication or execution of the said will by the said testator J. M. of the proper hand-writing of you and of such other person or persons whose names appear to be subscribed, and did or not you and such other person or persons respectively subscribe and set your and their names as witnesses to the signing and publication or exe-

cution of the said will by the said testator J. M. in the presence of the said J. M. and of each other, or how otherwise, and what is now become of such other persons, and where do they respectively now live and reside, or are or is any or either and which of such persons now dead? And if yea, When and where did they or he die? And was or not the said testator J. M. at the time of signing and publishing or executing his said will of sound and disposing mind memory and understanding as you know or do for any and what reason believe? Declare, &c.

EXHIBITS.

\*Look upon the writings now produced to you, and marked with the letters (A) and (B) and purporting to be the last will and testament of J. P. in the 2d interrogatory named, and a codicil thereto? Did you at any time and when see the said J. P. sign seal publish and declare the said produced writings or either and which of them as and for her last will and testament and a codicil thereto, and is the \*name J. P. set and subscribed to the said produced writings respectively, or either and which of them, of the proper hand-writing of the said J. P.? Were you and was or were any and what person or persons besides yourself present at the time when such produced writings or either and which of them were or was so signed sealed published and declared, and did such persons or person or any and which of them see the said J. P. sign seal publish and declare the said produced writings or either and which of them, and did you and any other and which of such persons or person set or subscribe your their his or her name or names to such produced writings respectively or either and which of them as a witness or witnesses thereto, or to either and which of them, and was or were such name or names, or any and which of them so subscribed in the presence of the said J. P. or not? Is or are your name or names or the name or names of any other and what person or persons appearing to be set or subscribed to such writings respectively or to either and which of them as a witness or witnesses thereto or to either and which of them, of your hand-writing or of the hand-writing of such person or persons respectively, or of any and which of them, and did you see such person or persons or any and which of them set and subscribe such produced writings or either and which of them? Is or are such person or persons or any and which of them dead? And if yea, When did they respectively or any and which of them die? Was the said J. P. at the time she signed or sealed published and declared such produced writings or either and which of them of sound mind memory and understanding? Declare, &c.

To prove a will and codicil where one of the subscribing witnesses is dead.

[ \*729 ]

Whether or no were you acquainted with the manner of living of the said A. B.? And if yea, At what sum upon the average do you compute the annual expenses of himself and his family to have been, other and beside his travelling expenses, and whether or no had the said A. B. any child who did not live in his family and in what situation was such child, and have you ever heard the said A. B. make

To prove the average annual expenses of the family of a person deceased, who was in his lifetime employ-

ed as a treasury messenger, and as to declarations made by him as to what one child not resident in his family annually cost him, also to prove the manner in which he usually travelled, and at what expense.

any and what declaration or declarations as to what such child annually cost him, and do you know the manner in which the said A. B. usually travelled in the journeys in which he was employed as treasury messenger and at what expense? Declare, &c.

To prove whether a person had other means of providing for his family besides what he received as a treasury messenger.

Whether or no had the said A. B. as you for any and what reason know or believe, any and what means of providing for the expenses of himself and his family and for the expense of journeys, other than from the moneys which he from time to time received from the said F. G.? Declare, &c.

[ \*730 ]

To prove the state of a family in proving a pedigree.

Whether or no did you know M. S. formerly of, &c. and when or about what time did the said M. S. die? And whether or no did you know W. C. formerly of, &c. and S. C. his wife, and was the said S. C. in any manner and how related to the said M. S., and when or about what time and where did she die, and what children had the said S. C., and what children survived her, and if any child or children of the said S. C. died in her life-time, did such child or children have any child or children, and what is become thereof? And whether or no did you know J. C. of, &c. the son of the said S. C., and S. C. the younger and E. C. the daughters of the said S. C., and did the said S. C. ever and when marry, and when and where did he die, and whether testate or intestate, and had he or did he leave any child or children? And if yea, What is become thereof? And did the said S. C. the daughter of the said S. C. ever and when marry and to whom and when and where did she die, and what children had she or did she leave? And whether or no did you know W. C. and T. C. sons of the said S. C. the younger, and what became of the said W. C., and did he ever and when marry as you know or believe, and did the said T. C. ever and when marry, and where and when or about what time did he die and whether testate or intestate, and had he or did he leave any child or children? And if yea, What is become thereof? And did the said E. C. the daughter of the said S. C. the elder ever and when marry and to whom, and when or about what time did she die, and had she or did she leave any child or children? And if yea, What is become thereof? Whether or no did you know the father of the said W. C. of, &c. the husband of the said S. C. the elder, and what was his name and where did he live, and when or about what time and where did he die, and what child or children had he besides the said W. C., and who was his eldest son and who was his second son, and did his eldest son in case the said W. C. was not his eldest, or if the said W. C. was his eldest did his second son at any time and when and where marry, and when and where did he die, and had he or did he leave any and what child or children? And whether or no is the said complainant his eldest son or who else is such eldest son? Set forth the particulars at large, according to the best of your knowledge remembrance and belief, and the truth declare.

\* Whether or no were any changes made in the out-fences of the two farms in the pleadings mentioned to have been occupied by James K. and John K. respectively at any time within your memory, and how long have you known the said farms respectively, and especially were any changes made in the out-fences thereof in or about or prior to the year 1773 or at some and what other time in particular? And whether or no were you and during what period of time in particular in the habit of attending at the collection of payment of rents to Sir T. B. in the pleadings named or to his agent, at the place and on the days of the collection and payment thereof, and did you attend at any and what dinner and by and to whom given on such days? And if yea, Whether or no during such \*period as you attended thereat, and especially before the year 1773 and for some and what time prior thereto did one person attend to pay rent and attend at the said dinner as the sole tenant or occupier of the said two farms, or did two persons so attend as several and distinct occupiers the one of the one farm and the other of the other of the said two farms, and whether or no was the rent for the said farms paid as two separate rents paid by two tenants, or as one gross rent paid by one? And whether or no as you do for any and what reason know or believe were the said two farms prior and how long prior to the said year 1773 assessed for and did pay government taxes and parish rates as two separate and distinct farms or as one joint and undivided farm? And whether or no in the year 1789 and how long previously thereto were the said two farms commonly known and reputed in the neighborhood thereof to be one joint farm and held by one tenant or two separate and distinct farms held by two tenants, and for what reason were the same so reputed, and state the various occupiers of the said two farms and under whom they have respectively occupied, and the names and descriptions whereby the said two farms have been known since you have known the same? Declare the truth and your utmost knowledge remembrance and belief herein.

To prove when alteration was made in the out-fences of two farms, whether rent was paid as for two farms or as one farm, and whether one person attended at the rent-receipt day, and at the dinner

[ \*731 ]

given to the tenants as sole tenant of the two farms or whether two persons attended as tenants; also to prove whether, previously to the year 1773, taxes and rates were assessed as for two farms or as one farm; and whether the farms were reputed to be one farm or two farms.

Do you know of any goods having been at any time previously to the month of — sold or delivered by the said complainant H. H. or by the said complainant J. A. to the said defendant R. P.? If yea, Set forth what goods were so sold and delivered by the said complainants H. H. and J. A. or either and which of them to the said R. P., and what was the value thereof, and at what time or times in particular the same were delivered to the said R. P. and how and by what means in particular you are acquainted with the several matters aforesaid? Declare, &c.

To prove goods sold and delivered by the plaintiffs to the defendant.

\* Look on the several books or exhibits now produced and shown to you at this the time of your examination, marked respectively with the letters —; Are you or not and by any and what means acquainted with the character or manner of hand-writing of the person

To prove the hand-writing of entries made in books, whe-

ther the same or persons who made the several entries in the said books or any and are correct or which of them? If yea, Of whose hand-writing are such entries or not, and if in- any and which of them, and who made such entries or occasioned correct to such entries to be made as you know or for any and what reason be- prove in what lieve? Are the entries and accounts therein contained just and right respects they as you know or for any and what reason believe? If not, What are so. error or errors are therein contained? Set forth the same error or errors, if any, fully and distinctly? Declare, &c.

To prove the hand-writing of entries made in a

[ \*732 ]

book, and whether the persons who made such entries are living or dead, and by whose direction the same were made.

\*Look upon the book now produced and shown to you at this the time of your examination marked with the letter (A), and on the entry or entries made therein in folio —; Are you acquainted with \*the character or manner of hand-writing of the person or persons who made such entry or entries, or any or either and which of them, and did you see such person or persons or either and which of them write? If yea, Of whose hand-writing is or are such entry or entries or either and which of them or any and what part thereof as you know or believe, and is or are such person or persons living or dead that made such entry or entries or any and what part thereof, and on what occasion or by whose direction was or were the same or any and what part thereof made as you know or believe? Declare, &c.

To prove the eldest son of a deceased person as being his heir at law.

\*Did you know A. B. in the pleadings of this cause named, and for any and what length of time? If yea, Do you or not know whether he was ever married, and had he or not any child or children by his wife, and what was or were the name or names of such child or children, and which of such children was the eldest son, and is such eldest son now living? Declare, &c.

To prove the brother of a deceased person, as being his heir at law.

\*Did you know E. M. in the pleadings of this cause named, and for any and what length of time? If yea, Do you or not know whether he was ever married, and if not, had he any brothers and what were their names and the order of their births, and which of them have survived him, and which of them was his eldest brother? Declare, &c.

To prove the nephew of a deceased person, as being his heir at law.

\*Did you or not know J. E. the testator in the pleadings of this cause named? If yea, Do you or not know whether the said J. E. was ever married, or whether he had any legitimate child or children, or whether such child or children survived him or died in his lifetime, and whether such child or children left any and what issue, and whether such issue is or are now living; and do you or not know whether the said testator J. E. had any brothers and sisters, and what were their names, or whether they or either of them survived him, and whether either and which of such brothers and sisters had any child or children, and what were their names, and which was the eldest son of the eldest brother of the said testator, and do you or not know who is the heir at law of the said testator? And if yea, In



what degree of kindred is he to the said testator, and how does he appear to be his heir at law?

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Whether or no did the said T. B. and J. E. or either and which of them, or any other person and who on their or either and which of their part and behalf, at any time and when after the date of the aforesaid letter or paper-writing call at your office or see you elsewhere and where and inform you or any other person and whom on your part and behalf that they or either and which of them had employed or meant to employ Mr. J. or any other person than yourself as their solicitor in the said cause, and \*when and by what means did you first know or had reason to believe and suspect that the said defendants or either and which of of them had or meant to employ the said Mr. J. or any other person than yourself as the solicitor in the said cause? Declare, &c.

To prove that the defendants informed the witness, their solicitor, of their intention to employ another solicitor, and when it first came to his knowledge.

[ \*733 ]

Whether or no did you at any time and when before the said cause came on to be heard inform the said defendants T. B. and J. E. or either and which of them that you should instruct counsel to appear for them at the hearing or did you at any time and when receive any instructions from the said defendants or either and which of them so to do, or did you in fact give any briefs or instructions to counsel to appear for the said defendants or either and which of them other than the briefs delivered by you for the other defendants, and did you not previously to such hearing and when first know that the said Mr. J. as the solicitor for the said defendants T. B. and J. E. had taken copies of the depositions and had prepared or meant to prepare briefs for the instruction of counsel at the hearing on the part of the said defendants or one and which of them? Declare, &c.

To prove whether witness informed his clients, two of the defendants in a cause, that he should instruct counsel to appear for them at the hearing, what instructions he received from them, and whether he did in fact deliver briefs to counsel

other than the briefs delivered for other defendants and when he first knew that another solicitor had prepared briefs for counsel.

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Whether or no did you know W. G. late of — but now deceased, the testator in the pleadings of this cause named, for any and how long a time previously to his death, and did you know S. J. the nephew of the said testator, and in what profession or situation of life was the said S. J.? Did the said S. J. ever and when serve on board his Majesty's ship U. and in what character and what has become of the said S. J. as you know or for any and what reason believe? Declare, &c.

To prove a knowledge of a person who entered the navy, and in what character, and what has become of him;

Look upon the paper-writing now produced and shown to you at this the time of your examination marked with the letter (A); Whether or no did you at any time and when compare the same with any entry in any and what book kept at his Majesty's Navy

also to prove a copy of an entry in a book kept at the navy office.

Office, and whether or no is the same a true copy of such entry? Declare, &c.

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To prove for how many years a person was employed as land agent to the proprietors of an estate (containing coal mines); also to prove that he kept a diary or account of his agency, and when he discontinued keeping same.

[ \*734 ]

\* How many years as you do for any and what reason know or believe prior to the year 1780 was the said L. N. land agent to the said Sir T. B. or to the owners and proprietors of the said W. estate and whether or no as you do for any and what reason know or believe prior to the year 1780 was the said L. N. land-agent to the said Sir T. B. or to the owners or proprietors of the said W. estate, and whether or no as you do for any and what reason know or believe was the said L. N. during the whole or any and what part of such period accustomed to keep such diary or account as is contained in the exhibit which has been shown to you or any and what diary or account of his agency or of the matters relating thereto, and up to what period of time in particular did he keep such diary or account of \*his agency, and why did he then cease or discontinue keeping the same, and whether or no did he ever afterwards keep any and what diary or account of his said agency or the matters relating thereto, and if not why not? Declare the truth and your utmost knowledge remembrance and belief herein.

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To prove the residence of a person in England, and in what language he corresponded or conversed; also to prove a knowledge of his hand-writing, and in what works he was engaged, and where he carried on the same.

\* When and upon what occasion did the said S. D. come to live and reside in England and for how long time did he live or reside there? In what language did the said S. D. always or generally write or correspond and converse during the time of his residence in England, and was he or was he not conversant in the English language? Are you or are you not well or in any and what degree acquainted with the character and manner of hand-writing of the said S. D., and have you or have you not frequently or at any times and how often seen him write in any and what language or languages and character? Did or did not the said S. D. when he was resident in England manage or carry on or employ himself in or about any work or works? If yea, Of what nature sort or kind was or were such work or works, and when and for how long time and at or in what house or houses or place or places was or were the same so managed or carried on? Declare, &c.

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To prove the loans of sums of money by the plaintiffs to the defendant.

Do you know of any money having been at any time previously to the month of — lent or advanced by the said complainant H. H. or by the said complainant J. S. to the said defendant R. P.; If yea, Set forth what sums of money were so lent and advanced by the said complainants H. H. and J. S. or either and which of them to the said R. P., and at what time or times in particular the same and each of them were and was so lent and advanced and how and by what means in particular you are acquainted with the several matters aforesaid? Declare, &c.

\* Whether or no did the said defendant C. L. in the life-time of the said S. D. lend or advance unto the said S. D. any sum or sums of money? If yea, What sum or sums of money and to what amount in the whole did the said defendant C. L. lend or advance unto the said S. D. in his life-time, and when or at or about what time or times was or were the same so lent or advanced? And did or did not the said S. D. at any time or times in his life-time and when repay such sum or sums of money or any or either and which of them unto the said defendant C. L. or satisfy him the same? Declare the truth of the matters inquired after by this interrogatory according to the best of your knowledge remembrance and belief, together with the grounds reasons or circumstances on which such your belief is founded, fully and at large.

To prove loans of sums of money by the defendant to a deceased person, and whether any part was repaid.

Whether or no was there on the — day of — any and what sum of money due and owing to the above-named complainants T. \*B. and B. B. and their partners in the R. Bank in respect of moneys advanced by the said complainants to or for the use or on the account of the said T. D. and B. B. and their said partners or how otherwise and what is now due to the said complainants in respect thereof? Set forth, &c.

To prove the amount due to [ \*735 ] the plaintiffs in respect of advances made by them as bankers.

\* Do you or not know whether the said J. B. deceased and A. R. also deceased in the pleadings of this cause named did at any time and when intermarry together or not? If yea, Were you present at such marriage ceremony or not, and by whom and in the presence of what witnesses and at what place and when and on what day in particular was such marriage solemnized and whether by banns or license? Declare, &c.

To prove marriage ceremony by witnesses present.

Whether or no was the said J. C. in the preceding interrogatory mentioned or inquired after ever and when married and to whom, and what was the maiden name of his wife? Had or not the said J. C. any and what children or child or issue by his said wife or by any other wife and whom by name, and particularly had he or not a daughter called by the name of —, and had he or not any other children or child and of what names or name? Declare, &c.

To prove a marriage, and that the parties had one daughter.

Whether or no do you know or were you acquainted with the said A. C. in the preceding interrogatory mentioned or inquired after for any and how long time and from and to what time? Did or not the said A. C. ever and when intermarry with M. H. late of, &c. and now deceased, and when and about what time did the said M. H. die? Declare, &c.

To prove a marriage, and the death of the wife.

\* Whether or not have you ever been employed in mining concerns or are you acquainted with coal mines and the manner in which coals are won and got? If yea, Set forth the nature of your profession or

To prove that witness has been employed in mining

concerns, and his knowledge of the coal mines lying under an estate; the dip or inclination thereof from the horizon, and thenature and course of the drains or soughs made for the purpose of carrying off the water and loosing the coals;

[ \*736 ]

also to prove that the coals lying under lands within a ring-fence have been loosed, and are in a condition to be worked without the aid of a steam engine; also to prove whether the same were so at the date of an agreement, and when and by whom the coals and mines were loosed and drained, and whether certain defendants could have prevented the same and how; Also if the mines had not been drained by means of a sough, whether one or more steam engines would not have been necessary and what would have been the expense thereof, and of keeping the

occupation and how you came to be acquainted with the nature of coal mines and the method of winning and getting coals; Whether or not do you know the R. H. estate in the pleadings in this cause mentioned and the mines and minerals lying thereunder and the estates in the pleadings in this cause mentioned to have been the property of Sir T. B. in the pleadings in this cause named deceased or any of them? If yea, Set forth how long you have known them and each of them and how and by what means you became acquainted with them; Whether or not are there any coal mines strata of coal or minerals lying under such estates or any part thereof? If yea, State what is the dip or inclination of such coal mines from the horizon; Whether or not was it necessary for the purpose of winning and getting such coals or coal mines that the same should be loosed or freed from water? Whether or not did Mr. L. in the pleadings in this cause mentioned drive any drain or make any sough or soughs for \*the purpose of loosing the coals and coal mines lying under the said R. H. estate? If yea, Set forth and describe particularly the nature of such drain or drains sough or soughs and set forth particularly the direction and course of such drain or drains sough or soughs from the tail or opening thereof where the water is discharged throughout the full extent of the driving of and the making of the same; Whether or not are the coals and coal mines lying under the lands and grounds within the ring-fence in the pleadings in this cause mentioned now loosed and in a condition to be worked won and got without the aid of a steam engine to pump up and discharge the water therefrom? If yea, Whether or not are such last-mentioned coals and coal mines so loosed and in a condition to be won and got by means of the said drain or drains sough or soughs? And whether or not is the water drained or carried away from such last-mentioned coals and coal mines by means of such drain or drains sough or soughs? Whether or not were such last-mentioned coals and coal mines so loosed and drained at the date of the agreement with the said Sir T. B. in the pleadings in this cause mentioned? Set forth when and upon what occasion and by whom such last-mentioned coals and coal mines were loosed and drained; Whether or not could the said defendant J. J., and R. H., J. H. and J. D. in the pleadings in this cause named or either of them have prevented such last-mentioned coals and coal mines from being loosed or drained? If yea, Set forth how and by what means they could have prevented the same from being loosed or drained; If such last mentioned coals and coal mines had not been loosed or drained by means of a drain or sough, whether or not would it have been necessary in order to win and get the same that a steam engine or steam engines should be erected for such purpose? If yea, Set forth how many steam engines would have been necessary for that purpose; Set forth the original expense or prime cost of such steam engines or steam engine, and set forth the annual expenses that would be incurred in keeping in repair and in the working of such steam engines or engine; Suppose the coals lying under the lands occupied by Jonathan K. in the pleadings in this cause mentioned were not loosed or drained and could not be loosed or drained without a steam engine, what in your opin-

ion would be the present value of such last-mentioned coals and coal mines? Suppose the coals lying under the lands occupied by James K. in the pleadings in this cause mentioned were not loosed or drained and could not be loosed or drained without a steam engine, what in your opinion would be the present value of such last-mentioned coals and coal mines? Declare, &c.

same in repair and working the same. Also to prove what would have been the value of the coals lying under the lands without a

of different tenants, supposing the coals could not have been loosed or drained steam engine.

\* From what points of the compass do the beds or strata of coal under the said W. estate or under any and what part thereof in general rise and sink, and especially from and to what points do the beds of coal or either and which of them being underneath such parts of the said estate as lie to the west of the sough or drain in the last preceding interrogatory mentioned rise and sink, and from and \*to what points do such of the beds of coal under the said estate as lie on the east of the said sough or drain rise and sink respectively, and from what distance therefrom do they rise or sink respectively? Declare the truth and your utmost knowledge remembrance and belief herein.

To prove the inclination from the horizon of certain beds of coal lying under different parts of an estate.

[ \*787 ]

\* Whether or no supposing a bed or vein of coal to have a general inclination downwards from one given point to another is it common or uncommon to find occasional variations in the dip of such bed or vein between the two points aforesaid? And if yea, Whether or no is the coal to be found under the lands and grounds in the second of these interrogatories mentioned or referred to as much or more subject to such occasional variations than beds or veins of coal to be found under other lands and grounds in general, and assuming such occasional variations to exist and a sough or drain driven along that side of the bed which according to the general inclination would be the lowest side, how would such parts of the coal as might occasionally vary from such general inclination be loosed and worked? Declare the truth, together with your means of knowing and reasons for believing the same.

To prove that veins of coals which incline downwards, occasionally vary in the dip; and that the coals under the lands in question are subject to such variations, and supposing a sough driven along the lower side, how would the coal found in the

parts varying from the general inclination be loosed

and worked.

\* Whether or not had the said complainants or those through whom they claim sunk any pits or pit or made and erected any steam engines or steam engine or got any coals or coal in the lands and grounds occupied by the said Jonathan K. in the pleadings in this cause mentioned at the date of the agreement therein mentioned? If yea, Set forth when such pits or pit steam engines or steam engine were or was sunk made and erected; Set forth the purpose for which such steam engines or steam engine were or was made or erected; Whether or not were the said defendants or their or any of their stewards agents or tenants informed of or acquainted with or were they privy to the sinking making and erecting such pits or pit engines or engine? If yea, Set forth when and to whom and by whom such information was given; Whether or not was a Mr. B. the steward or agent of

To prove that the plaintiffs had sunk pits and erected steam engines on the lands of a particular tenant at the date of an agreement, and when the same were sunk and erected and the purpose for which the steam engines

were erected, and whether the defendants or their stewards, agents, or tenants were informed thereof or privy thereto.

Also to prove whether a former steward of the defendants inspected the estate, and saw the pits and engines, and that the same might have been seen at a considerable distance; Also to prove that the present steward some years ago, inspected the estate, and that he could see the pits, steam engines and other works.

the said defendants or either of them? If yea, Did he ever inspect or overlook the said defendant's estate at W. in the pleadings in this cause mentioned? If yea, Whether or not did he upon such inspection see the said pits and engines? Whether or not are such pits and engines large objects and easy to be seen at a considerable distance? Whether or not is a person of the name of H. the steward or agent of the said defendant's W. estate? If yea, Whether or not did the said H. about eight years ago inspect or overlook the said estate? Whether or not did you then see him, and if yea, Was he when you saw him in such a situation that he could see the said pits and steam engines and other works in the lands and grounds occupied by the said Jonathan K.? Declare, &c.

[ \*738 ]  
To prove the method of working coals where there are two strata and one of them is intermixed with a bed of iron-stone, and in case of the sale of the upper stratum of coal what stipulations are usually made to prevent the grantee from destroying the iron-stone, or to prevent the iron-stone from being rendered useless to the grantor at the will of the grantee, and what instances have come within the witness's knowledge.

\*\* Whether or no in grants or leases of coal where there are two beds or strata of coal whereof the upper bed or stratum is united to or intermixed with or contiguous to a bed of iron-stone is it necessary as you do for any and what reason know or believe to dig and get the upper bed of coal before the iron-stone can be dug and got and *vice versa*; and whether or no is it usual to sell and dispose of such upper bed or stratum when the iron-stone is not also sold and disposed of, but if nevertheless the upper bed of coal should be sold and the iron-stone reserved, whether or no would any and what provisos and stipulations be necessary in order to prevent a grantee in the fee or lessee having the power so to work the said upper bed of coal as to destroy entirely or to damage greatly and in what manner the said iron-stone from delaying to work and dig such bed of coal so as to lock up and render useless the said iron-stone as long as he might think fit, and what provisions and stipulations would be proper and necessary for the purposes aforesaid, namely, 1st. What provisos and stipulations are necessary and proper to prevent the lessee or grantee so working such upper bed of coal as to destroy or greatly damage the said iron-stone; and 2dly. What provisos and stipulations are proper and necessary to prevent the said iron-stone from being locked up and rendered useless to the grantor at the will of the grantee in fee, and whether or no did you ever hear of a grant or lease of any upper bed or stratum of coal so united and intermixed or contiguous as aforesaid with provisos or stipulations proper for the above purposes, and by whom and to whom was any such grant or lease made? Set forth, &c.

To prove notice given to the defendant of the plaintiff's claim to an estate, and whether the same was be-

\* Had or not the said defendant at any time or times and when in particular and how and in what manner and upon what occasion or occasions any and what notice or information given to him by or on behalf of the said complainant or any other person or persons and whom by name, or otherwise and how, that the said complainant had or claimed to have some and what right title or interest in or to the

premises in the pleadings of this cause mentioned? And if yea, Was such notice or information so given to the said defendant before or after and how long before or after he the said defendant had any and what lien charge or security upon the said premises or how otherwise? Declare, &c.

fore or after the defendant had a charge thereon.

\* Did you at any time and when and by whose authority make any and what offer to the said complainant relative to the subject-matter of this cause or any and what part thereof? And if yea, On whose behalf? Set forth all you know touching or concerning the matters inquired after by this interrogatory fully and at large.

To prove an offer made to the plaintiff.

\*\* Are you or not acquainted with the several manors and other freehold hereditaments situate in the counties of — in the pleadings in this cause mentioned or any and which of them? Were you or not employed as the surveyor and agent for and on behalf of any and which of the said several parties in the preceding interrogatory inquired after in the partition of the said several manors and other hereditaments in the pleadings of this cause stated? If yea, When or at what time and by which of the said several parties were you so employed? And did you or not act as such surveyor or agent in the business of such partition, and are you or not acquainted with the several allotments made to the said parties respectively or any and which of them and to whom? And do you or not know a certain farm called W. farm in the pleadings of this cause mentioned? If yea, where or in what parish or parishes is the same situate, and did or not the said farm called W. farm form part of any and which of the said allotments made in the partition of the aforesaid manors and other hereditaments and to whom was the same allotted? And do you or not know a certain piece or parcel of land situate in White Meadow, containing eleven acres or thereabouts, in the pleadings in this cause particularly mentioned? Was or not such piece or parcel of land ever and when and by whom shown to you as forming part of any and what farm comprised in the aforesaid partition between the said several parties, and was or not the said piece or parcel of land situate in White Meadow included in the allotment of the said farm called W. farm or in any and what allotment on the partition of the aforesaid manors and other hereditaments, and to whom was the same allotted as you know or for any and what reason believe? Declare, &c.

[ \*739 ]

To prove that witness was employed as surveyor on the partition of estates; his knowledge of the allotments and as to a particular farm in what allotment it was comprised; that a piece of land was shown to him as forming part of the farm, and was allotted therewith, and to whom.

\* Were or not the several allotments of the said manors and other hereditaments made to the said parties respectively in the first interrogatory named on the partition thereof of equal value or what was the difference in value between the said allotments respectively as you know or do for any and what reason believe? And did or not the allotment made to the said complainants comprise or contain a certain piece or parcel of land forming part of a certain meadow called White Meadow in the pleadings of this cause particularly mentioned as and for owelty or equality of partition, or why or for what

To prove whether the allotments made upon the partition of certain estates were of equal value; and that the allotment made to the

plaintiffs comprised a particular piece of land as part of a farm, [which piece of land had been shown to the surveyor by mistake as being part of the farm;] also to prove whether the reason was the said piece of land forming part of the said meadow called White Meadow comprised or included in the allotment made to the said complainants? And was or not the said piece of land forming part of the said meadow called White Meadow allotted unto the said complainants subject to tithes as part of and together with the said freehold farm called W. farm? And in particular was or not the allotment made to the said complainants of equal value with the several other allotments made of the said manors and other hereditaments as you know or do for any and what reason believe? Declare, &c.

allotment made to the plaintiffs was of equal value with the other allotments.

[ \*740 ]

*\*Interrogatories relating to partnership matters.*

Interrogatories to be administered, &c. wherein S. W. is complainant, and T. F., H. J. F., R. F., S. G. F., M. F. and S. F. are defendants, on the part and behalf of the said complainant.

1st. [*General interrogatory as to knowledge of parties; vide antea, p. 688.*]

To prove how long witness continued in the service of certain deceased persons, and when he left them, and whether he afterwards returned; also as to any declarations which he may have heard made by J. F. that R. J. F. was his partner; How witness made out the bills to customers; how many keys there were to the till, what names were painted over the shop door and house door, who appeared

2d. Whether or no did you ever and when first live and in what situation and at what age with J. F. and R. J. F. both late of, &c. but now deceased in the pleadings of this cause respectively named, and for how long did you continue with them and when did you quit them; and did you ever and when return to them and for how long did you afterwards remain with them and in what situation? Whether or no did the said J. F. ever and when and where and how often declare to you or in your hearing that the said R. J. F. was his partner in any and what trades or business, or make any declarations to such and what effect? Whether or no did you ever and when and how often by the directions of the said J. F. make out bills to customers of the said trades or businesses or any of them in the name of 'J. F. and company' and who was intended by the word "company" as you know or collected and how from the said J. F.? And how many keys were there to the till of the shop in which the said businesses were carried on, and by whom were such keys respectively kept, and who had access thereto, and what and whose expenses were paid therefrom? What name or names was or were painted over the shop door in which the said business was carried on, or painted or engraved on the passage door of the house in which the said J. F. and R. J. F. lived, and by whom or by whose direction was or were such names or name painted or engraved, and who was or were intended thereby as you know or for any and what reason believe? Who appeared to act as masters or partners in the said trades or businesses, and who had access to all the books of the said trade and make entries therein and gave receipts for moneys received and in what names? Whether or no did the said R. J. F. ever and when and how often



in the presence or hearing of the said J. F. speak of himself as a partner in the said trades or businesses with the said J. F. or to such effect; and did or not the said J. F. upon such occasions deny or admit the same or how otherwise? What part did the said complainant take in the management of the family or of the said trades or businesses as you know or believe? Set forth the particulars, &c.

3d. What is your trade or business and where do you live? Whether or no did you ever and when and for how long deal in any and what goods with J. F. and R. J. F. late of, &c. but now deceased and in the pleadings of this cause named or either and which of them? In what name or names were your invoices or bills of parcels for such goods made out during the life of the said R. J. F. and after his death? Whether or no were or was any bills or bill of parcels ever returned to you by the said J. F. which had \*been made out in his name alone, and with any and what instructions as to making out the same in a different and what manner? Whether or no were you ever and when informed by or did you in any manner and how collect from the said J. F. that he had any and what partner in his said business; and whether or no did you know from the course of any dealings with the said J. F. and R. J. F. that they were partners together in the said business? Declare, &c.

4th. Whether or no are you a partner in any and what banking-house or house of business? Whether or no did J. F. late of, &c. but now deceased at any time when he was in — and when in particular open any cash account with you and in what name or names; and whether or no did he upon that or any other and what occasion or occasions make any and what declaration or declarations to you or to any person and whom in your hearing respecting his brother R. J. F. in the pleadings in this cause also named being in partnership with him in any and what trades or businesses? Set forth, &c.

5th. Whether or no were you at any time and for how long employed in any and what situation in the late firm or banking-house of B. and company? Whether or no had J. F. and R. J. F. late of — but now both deceased and in the pleadings in this cause named or either and which of them any cash account with the said banking-house during such your situation therein, and what was the name or style of such account; and did the said J. F. and R. J. F. or either and which of them draw in their own names upon such account and were such drafts honored, and were such accounts with such drafts credited therein afterwards admitted by them or either and which of them? Declare, &c.

6th. What is the right for voting for members of parliament at —? Whether or no did R. J. F. late of, &c. ever and when vote for any member or members of parliament for the said borough and in what right and character; and whether or no did the said R. J. F. ever and when serve any and what parochial offices in the said borough? Set forth, &c.

7th. Whether or no did J. F. in the pleadings of this cause named, them, To prove whether R. J. F. voted for a member of parliament, and whether he parochial office in the borough. To prove whether J. F. at the election, made any

to act as masters or partners, and who had access to the books;

also to prove that R. J. F. spoke of himself as being a partner in the hearing of J. F. and whether he denied or admitted the same, and what part the plaintiff had in the management of the business.

[ \*741 ]

To examine tradesmen who dealt with the deceased as to the names in which the invoices were made out, and as to their knowledge or information that R. J. F. was a partner with J. F.

To examine a banker with whom J. F. banked, as to declarations made by him respecting R. J. F. being in partnership with him.

To examine the banker's clerk to prove whether J. F. and R. J. F. both kept a cash account and in what name, and whether their drafts were honored, and the accounts with such drafts credited therein admitted by served any declarations

respecting being a partner with him. To prove conversations with J. F. respecting the provision intended to be made for the plaintiff by him or by R. J. F.

To prove a conversation between R. J. F. and J. F. respecting the provision made for the plaintiff by the will of R. J. F.

[ \*742 ]

F., and whether he then delivered his will to J. F.

To prove a purchase of stock by J. F. and R. J. F. as a gift for the plaintiff, and that the same after the death of R. J. F. was transferred into the plaintiff's name; also to prove declarations by J. F. respecting R. J. F. being a partner with him, and his share in the business.

To prove a declaration made by J. F. two days before his death, respecting the plaintiff.

To prove whether witness ever attended any meeting of the defendants for the purpose of settling the share of H. J. F. and

upon the occasion of any and what election for a member or members of parliament for the borough of — make any and what declaration and when respecting his brother R. J. F. in the pleadings of this cause named being a partner with him? Declare, &c.

8th. Whether or no were you acquainted with J. F. and R. J. F. late of, &c. but now deceased the testators in the pleadings of this cause respectively named or either and which of them, and how long before their respective deaths? Whether or no had you at any time and when any conversation or conversations with the said J. F. respecting the said complainant, or respecting any provision which he had made or intended to make for the said complainant, or which had been made for the said complainant by the said R. J. F.? If yea, Set forth all the particulars of such conversations, and when and upon what occasions the same passed according to the best of your knowledge remembrance information and belief and the truth declare.

9th. Whether or no were you at any time and when and where present when any conversation passed between R. J. F. and J. F. \*both late of, &c. but now deceased respecting any provision made for the complainant S. W. by the will of R. J. F.? If yea, Set forth what was said both by the said R. J. F. and the said J. F. upon that occasion; And whether or no did the said R. J. F. then or at any other time and when deliver to the said J. F. his will or any paper which he described as his will? Set forth, &c.

10th. Whether or no did J. F. and R. J. F. in the pleadings of this cause respectively named or either and which of them at any time and when purchase any and what sum in any and what stock and in whose names as a gift for the said complainant as you know or for any and what reason believe; and whether or no was the same at any time and when and upon what occasion and by whose advice after the death of the said R. J. F. transferred into the name of the said complainant as you know or for any and what reason believe? Whether or no did the said J. F. ever and when and upon what occasion make any and what declaration respecting his brother R. J. F. being a partner with him and respecting the share and interest which he had in the joint trade and property? Set forth, &c.

11th. Whether or no were you present in the room with the said J. F. about two days before his death when the said J. F. made any declaration to the defendant H. J. F. and S. F. respecting the said complainant? If yea, Set forth the particulars of such declaration, and what was said thereupon by the said H. J. F. or S. F.? Declare, &c.

12th. Whether or no did you on the part of the defendant H. J. F. ever and when attend any meeting of the said several defendants or any and which of them for the purpose of settling the share of the said H. J. F. in the said J. F.'s estate? If yea, Was the value of the said J. F.'s estate then stated to be or admitted by the said defendants or any and which of them to be of any and what amount in the whole? Declare, &c.

13th. [*Interrogatory to prove exhibits in the hand-writing of J. F.*]

Lastly. [*The concluding general interrogatory; Vide antea, p. 689.*] what the value thereof was admitted to be.

Look at the deed or writing now produced or shown to you at this the time of your examination marked with the letter (A), purporting to be articles of copartnership between the said W. G. and the said A. E. Whether or no was the same at or about any and what time or times signed sealed or delivered by any and what persons or person in your presence? Are you or not a subscribing witness to the signing sealing or delivering thereof by the said W. G. and the said A. E. or either and which of them? Of whose hand-writing is your name now appearing to be subscribed or indorsed as witness thereto? Declare, &c.

To prove a partnership deed as an exhibit.

Were you or not ever and when and for how long between the — day of — and the — day of — employed at — in the county of — in the conduct or management of any and what trade or trades carried on during such time or any and what part of such time in the name of the said W. G. or any other and what person or \*persons as his partner or partners? And if yea, Did you or not during such or any and what part of such time keep any and what book or books for the purpose of making entries of any and what kind respecting the dealings and transactions of such trade or trades or either of them? Look upon the books produced and shown to you at this the time of your examination marked respectively with the letters —; Were or not the several entries therein or in some and which of them or some and which of such entries made by you? And if yea, When and upon what occasion and for what purpose did you make such entries respectively, and what do the same respectively purport to be? And did you or not during such time or any part of such time and when, make out or deliver any bill or bills to any person or persons and to whom, for goods sold during such time and when, from such trade or trades or some and which of them? And if yea, To whom was or were such person or persons charged to be indebted, by the title of the said bill or bills; and did you or not during such time and when receive from any person or persons and whom any and what sum or sums of money for goods sold from the said trade or trades or some and which of them during such time? And if yea, For whom and for whose use did you by writing or otherwise and how acknowledge the same to be received; and was there or not during such time or some and what part of such time some written or painted inscription in or on the external part of the shop or warehouse in which the said trade or trades or some and which of them were carried on, denoting the name or names of the person or persons by whom or upon whose account the same were carried on? And if yea, Set forth what in particular was such writing or inscription in the very words thereof? Declare, &c.

To prove entries in books of the dealings in trade by the person employed in the [ \*743 ] management, of the business and how the bills were made out, and also the receipts;

also to prove what names were written over the shop.

Look at the paper-writing now produced, &c. purporting to be a proposal for or heads of articles of copartnership between —? Whether or no do you know or are you acquainted with the character or manner of hand-writing in which the same or any and what parts or part thereof are or is written? If yea, Set forth of whose hand-writing the same and every or any and what parts or part

To prove as an exhibit a paper containing heads of articles of copartnership;

Also to prove that the same were delivered to a solicitor to have regular articles of copartnership drawn, that the trade was carried on agreeably to the stipulations contained therein, and also to prove by whose direction certain advertisements were inserted in newspapers.

[ \*744 ]

To prove by the examination of a partner when the balance sheets of the copartnership accounts were made up, and whether the same were delivered to T. B. and why; also to prove business and whether if he had demanded a share thereof the witness would have complied therewith.

thereof is or are, and have you or not seen such persons or person write? Whether or no was the said paper-writing at any time and when and by whose direction sent or delivered to any person or persons and whom in order that regular articles of copartnership might be drawn pursuant thereto, or otherwise; Whether or no did you for any time and when, and for how long and where, carry on any and what trade or trades in copartnership with the said T. E. upon the terms stipulated and expressed in the said paper-writing, or upon any and what terms and conditions? Look upon the printed newspapers now produced, &c. entitled respectively —, and upon the advertisement in each of the said newspapers marked —; When and for what purpose and by whose direction were the said several advertisements or some and which of them inserted in the said several newspapers, and were the same or any and which of them inserted with your knowledge or approbation? Declare, &c.

\* In what manner and at what periods were the balance sheets of the said accounts made up? Were or not such balance sheets from time to time delivered to the said T. B.? If yea, For what reason and for what purpose were such balance sheets made up and delivered to the said T. B.? Did you or did you not at any time and when during the continuance of the said partnership between the said G. P. and T. B. and yourself, consider the said T. B. entitled to any and what share and proportion of the profits of the said brokerage business? And if the said T. B. had demanded any share or proportion of such profits in the years when such business was profitable, should you or should you not have complied with such demand, &c.? Set forth, &c.

whether witness considered T. B. entitled to any share of the profits of the brokerage business and whether if he had demanded a share thereof the witness would have complied therewith.

To prove the amount of capital advanced by a partner.

\* Do you and by any and what means know whether the said A. B. advanced any and what sum or sums of money as and for his share of the capital of the said trade in the pleadings of this cause mentioned? And if yea, Set forth the several sums of money which he advanced for such purpose; And have you or not examined the said copartnerships books? And if yea, What sum or sums of money does the said A. B. by the said books appear to have brought into the said trade? Declare, &c.

To prove a partnership business being increased.

\* Do you or not know the nature and extent of the trade in the pleadings of this cause mentioned? If yea, What was the extent of the said trade at the time of the commencement of the said partnership between the said —, and was or not the said trade afterwards increased and by whom and to what extent and by what means? Declare, &c.

To prove whether the defend-

Whether or no had the said defendants R. and S. or either and which of them any acquaintance or connection with R. C. who was

some time since your partner, before he became your partner ; And whether or no did your dealings and transactions with the said defendants R. and S. depend upon the continuation of your partnership with the said R. C., or upon the personal confidence which the said defendants R. and S. reposed in you? Declare, &c.

dants were acquainted or connected with R. C. the witness's late partner ; and whether witness's deal- confidence re-

ings with the defendants depended upon the continuance of the partnership or upon the reposed in the witness.

Whether or no did you in the month of ——— command the packet boat in his Majesty's service called the ———, bound from F. to L. ; and whether or no did you at any time in or about the said month of ——— make a voyage in the said packet from F. to L. and on what day did you sail from F. and on what day did you arrive at L. ? \*whether or no did the said complainant the Honorable Mr. M. sail with you as a passenger in the said packet on the said passage? And if yea, What name did the said complainant assume, and under what name did he pass upon the said voyage? Set forth, &c.

To prove that witness commanded a packet boat ; that the plaintiff was a passenger on a particular voyage, and what name he assumed. [ \*745 ]

Whether or no did you in the month of ——— see the complainant the Honorable Mr. M. at L. ? If yea, When and where and upon what occasion did you first see him, and did any conversation then pass between you and the said complainant respecting the defendant S. ? If yea, Set forth the particulars of conversation, and what was said thereon by the said complainant and by you respectively, according to the best of your knowledge remembrance and belief?

To prove the particulars of a conversation between the plaintiff and witness respecting the defendant.

Whether or no did you on the ——— day of ——— see the complainant the Honorable J. M. at L. ? If yea, When and where and upon what occasion did you first see him, and what passed thereupon, and when and how soon afterwards did you next see him, and did the said complainant enter into any conversation with you, or make to you any declarations respecting the defendant S. ? If yea, Set forth the particulars of such conversation or declarations according to the best of your knowledge remembrance and belief and the truth declare.

To prove the particulars of subsequent conversations, and the declarations made by the plaintiff respecting the defendant.

Look upon the letters or paper-writings now produced, &c., marked &c. Of whose hand-writing are the said several letters or paper-writings and every of them, or the superscriptions thereof and the signatures thereto, as you know or believe? And did you ever see the person or persons write whom you believe to have written superscribed or signed the same respectively, or by what means are you acquainted with the manner or character of the hand-writing of such person or persons? Set forth, &c.

To prove letters as exhibits.

\* Do you or not know whether the said J. N. the intestate deceased was ever married and when and to whom, and whether he left any and what legitimate children living at his death or any legitimate

To prove the plaintiff's pedigree, and declarations

of a deceased person respecting his nearest relations.

grandchildren or grandchild, or any wife or any father or mother, brother or sister, brothers or sisters, or brother's or sister's children, uncles or aunts, or uncle's or aunt's children respectively living at the time of his death? And if any, Set forth whom by name particularly. And do you or not know whether the said complainants A. B. and C. D. or either and which of them were or was in any manner and how related to the said intestate J. N. deceased? And if yea, Set forth their or her or his degree of kindred, and how you make out the same; and if you at any time heard the said intestate J. N. make any and what declarations touching or concerning any persons in particular and whom by name, being his nearest relations of the whole or of the half blood; Set forth all you know and have heard and believe concerning the matters inquired after by this interrogatory, according to the best of your knowledge remembrance and belief, with the reasons and circumstances to induce your belief fully and at large.

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[ \*746 ]

To prove that certain persons occupied certain farms until their death; that upon their death their son entered and continued in possession until his death; and that upon his death another person entered into possession.

\* Whether or no were or was the said W. C. and S. his wife or either and which of them at any time and for how long in possession or in the receipt of the rents and profits of any messuages farms or lands in the parish of — commonly called —, and by whom are such messuages farms and lands now respectively occupied? And whether or no did the said S. C. continue in such possession or receipt until death, or how otherwise? And whether or no did J. C. the son of the said W. and S. C. at any time and when enter into the possession or into the receipt of the rents and profits of the said messuages farms or lands and whether or no did he continue in such possession or receipt until his death, or how otherwise? And whether or no did T. C. in the last interrogatory named, at any time and when enter into the possession or into the receipt of the rents and profits of the said messuages farms or lands? And whether or no did he continue in such possession or receipt, or how otherwise? Declare, &c.

To prove that a person was in possession of lands, &c. until his death; that he died intestate and without issue;

Whether or no was J. C. late of, &c., commonly called — yeoman at any time and when in possession or in receipt of the rents and profits of the freehold and copyhold messuages lands and tenements which were subject to a mortgage which formerly belonged to the late A. M. clerk, and afterwards to the defendant M. M. and now to the defendant T. F. and whether or no did he continue in such possession or receipt until his death, and when did he die? Whether or no was the said J. C. ever and when married and to whom, and had he and did he leave any child or children, and whether or no did he die testate or intestate, and who upon his death entered upon such possession or receipt? And whether or no was T. C. late of, &c. aforesaid at any time and when in the possession or in the receipt of the rents and profits of the said freehold and copyhold messuages lands and tenements, and whether or no did he continue in such possession or receipt until his death or how otherwise, and when did he die, and was he ever and when married and to whom, and had he and

Also to prove that another person had possession of the lands, &c. and whether he left any family;

did he leave any child or children, and did he die testate or intestate? And whether or no was any and what allotment made to the said T. C. in respect of the said freehold and copyhold lands or any and what part thereof under any act of parliament passed for embanking the common salt-marsh in the township of W. aforesaid, and for inclosing the same? Set forth, &c.

Also to prove that an allotment of common land was made to him in respect of the same lands.

Whether or no did the said F. G. as you for any and what reason know or believe receive any moneys from the Treasury or elsewhere and where on the account of the said A. B. and have you ever and in what years and how often seen the said F. G. pay any and what sums of money to the said A. B. in respect of the moneys so received by him, and whether or no was it the practice of the said F. G. at such times to take receipts or memorandums for the moneys so paid to the said A. B. or how otherwise, and whether or no was it as you for any and what reason know \*or believe the general habit of the said F. G. to be regular in his account and to take receipts or make memorandums of moneys paid by him or how otherwise? Declare, &c.

To prove that a treasury messenger received moneys due to another messenger, that he paid over the moneys so received, and whe-

[ \*747 ]

ther he was in the habit of taking receipts for the same.

Whether or no did the said G. G. in the course of the dealings and transactions between him and the said T. D. frequently or how often for any and how long time receive from the said T. D. drafts or bills of exchange for money and to what amount yearly for the purpose of the said G. G. receiving the money payable thereby or for what other purpose; and whether or not also for the purpose of the said G. G.'s paying all or part of the money so received to any other person or persons on account of the said T. D.? Did it or not appear to you on drawing out the accounts between the said G. G. and T. D. that it was reasonable that any and what sum of money should be allowed by the said T. D. and on what ground unto the said G. G. or his representatives or estate as or by way of commission for receiving the money on or by virtue of such bills or drafts? Was or were or not any and what sum or sums of money charged in the accounts drawn out by you as aforesaid for such commission and whether or not for postage of letters? Had you or not ever and when any discourse or conversation with the said T. D. with regard to his making any and what allowance to the estate or representative of the said G. G. for such commission and postage of letters or on either and which of such accounts? If yea, What answer did the said T. D. make or how did he express or declare himself relating to such matters or things or either and which of them? Declare, &c.

To prove remittances of drafts and bills to an agent for the purpose of receiving the money due thereon; that it appeared reasonable to the person employed to make out the accounts between the parties that an allowance should be made for commission and postage of letters;

also to prove what was said by the person charged there-with upon a conversation

with him relative thereto. [Refer to p. 711, ante.]

Hath or have or not any and what sum or sums of money been To prove what

rents have been paid to the defendant by the tenants of the premises in question.

paid to or to the use of the said J. A. in the title to these interrogatories named by any tenant or tenants as the rent or rents of any and what part of the premises in the 5th interrogatory mentioned? If yea, Set forth for what and by whom by name, and what sum or sums hath or have been so paid? Declare, &c.

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Interrogatories to be exhibited to witnesses, &c. [see p. 685, *antea*] wherein J. B. is complainant and R. B. is defendant, on the part and behalf of the said complainant.

1st. [*As to knowledge of the parties ; vide p. 687, ante.*]

To prove that witness advertised the premises for sale and sold the

[ \*748 ]

same by auction, what conversation witness had with the defendant the vendor as to the price at which the same should be sold ; whether the lot was knocked down fairly and bona fide, and whether the defendant then made any objection thereto.

To prove as an exhibit the memorandum or receipt signed by the auctioneer, what authority he had for signing the same, and the general usage of auctioneers as to signing receipts on the part of the vendors, and whether witness had received the deposit.

To prove as

2d. Whether or no did you or any person and who in partnership with you at any time and when and by whose order or authority cause the premises in the pleadings in this cause mentioned amongst others to be advertised for sale by auction, and whether or no did you or any person and who in partnership with you \*at any time and when and where and by whose order or authority put up the said premises to sale by public auction, and were the same described as lot 1, or as what other lot at the said auction? And whether or no did any and what conversation pass between you and the said defendant previously to the said lot being put up to the price at which the same should be sold, and whether or no did the said defendant bid for the said lot and how much and to whom was the said lot knocked down and at what price? And was it so knocked down fairly and bona fide or how otherwise? And had the said defendant any time or opportunity to make a further bidding; and did the said defendant when the same was so knocked down publicly or otherwise and how object thereto, or when first did the said defendant object to the said sale? Set forth, &c.

3d. Look upon the paper-writing now produced, &c.; Of whose hand-writing is the said paper-writing and every part thereof and in particular the signatures of "John White and Son" set and subscribed thereto; And whether or no had you authority from the said defendant to set and subscribe your name to such memorandum or receipt or to sign any agreement as to the sale of the said premises? And is it the usage for persons employed as auctioneers to sign such memorandum receipts or agreements on the part of the persons by whom they are employed to sell, and whether or no had you then actually received from the said complainant the said sum of —l. or for what reason did you give a receipt for the said sum as if you had actually received it? Set forth, &c.

4th. Look upon the paper-writing now produced, &c.; Of whose hand-writing is the said agreement, and whether or no was the same signed by any person and whom in your presence? And is your name set and subscribed as a witness thereto of your proper hand-writing? Where was the said agreement written and signed, and was the said defendant then present, and did he make any and what objection thereto, and whether or no were you present when the sale of the



said lot took place? And if yea, State what passed thereupon, and whether when the said lot was knocked down to the said complainant any and what objection was made thereto by the said defendant? Set forth, &c.

Lastly. [*The concluding general interrogatory ; see p. 688, antea.*]

*Opinion.*—The question in this cause is, whether any memorandum of the sale was signed by any person lawfully authorized by the defendant, and the only paper that can be stated to have that effect is the memorandum and receipt of the —l. mentioned in the bill to have been signed by one of the Whites.

The agreement signed by the plaintiff does not bear upon the difficulty of the case. If the evidence comes up to the representation of it, I think the plaintiff will succeed ; but the case is not without doubt.

an exhibit the agreement signed by the plaintiff, whether the defendant was present when the same was signed and objected thereto, and what passed at the time of sale.

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\*Interrogatories to be exhibited to witnesses, &c. [ \*749 ]  
[see p. 685, antea.]

1st. [*As to the knowledge of the parties, see p. 688, antea.*]

2d. Whether or no were you employed on — as auctioneer at the sale of a certain copyhold estate which had belonged to the late S. C. late of, &c. inn-holder? If yea, In how many lots was the estate sold, and who was the purchaser at such sale of lots — and —, and at what prices? Look upon the printed paper now produced, &c. marked with the letter (M) ; Whether or no is the same one of the copies of the particular and condition of the said sale, and were the said lots — and — purchased subject to such particular and condition? And if yea, What was the amount of half the auction duty on the said lots — and —, and what was the appraised value of the fixtures which were to be taken by the purchaser of lot —, and at what sum was the timber on lot — valued? Set forth, &c.

To prove by the auctioneer in how many lots an estate was sold ; also to prove as an exhibit a copy of the particulars of sale, the amount of half the auction-duty, and the value of fixtures and timber.

3d. Whether or no were you at any time or times and when after — present at any conversation or conversations between the said complainant and the said defendant as to whom the said complainant was to consider as the purchaser of lots — and — part of the estate of the late S. C., being the premises in the pleadings in this cause mentioned? If yea, set forth all and every the particulars of such conversation or conversations, and what was said therein both by the said complainant and the said defendant respectively, and when and where and in whose presence and hearing and upon what occasion or occasions all and every such conversation or conversations took place? Set forth, &c.

To prove conversations between the plaintiff and defendant as to whom the plaintiff was to consider as the purchaser of particular lots.

4th. Whether or no were you present when the said complainant delivered to Mr. K. the possession of the premises in the pleadings in this cause mentioned? If yea, Set forth the particulars of what passed upon that occasion and what was said thereupon by the said complainant to the said Mr. K. ; Set forth, &c.

To prove delivery of possession by plaintiff to a Mr. K. and what passed thereat.

To prove application made by defendant to the plaintiff for time to pay the purchase-money, and whether the same was after possession was delivered to Mr. K.

To prove declaration by Mr. K. as to his having employed the

5th. Whether or no were you at any time present when the said defendant made any application or request to the said complainant to give him time to pay the purchase-money of the premises in the pleadings mentioned? If yea, Set forth the particulars of such application and request, and when the same was made, and whether or no after the said Mr. K. was in possession of the said premises; Set forth, &c.

6th. Whether or no did you ever and when hear the said Mr. K. make any and what declaration and to whom as to his having or not employed the said defendant to purchase for him of the said complainant the premises in the pleadings in this cause mentioned? Set forth, &c.

Lastly. [*The concluding general interrogatory, see p. 688, antea.*]

defendant to purchase the premises for him.

[\*750] \*In Chancery.

Interrogatories to be administered to witnesses &c. [*see p. 685, antea*] wherein J. D. is complainant and I. D. and T. R. C. are defendants, on the part and behalf of the said complainant.

1st. [*As to knowledge of the parties; see p. 688, antea.*]

2d. [*To prove as an exhibit the agreement signed by the defendant I. D. with the plaintiff; see the first interrogatory inserted in p. 712, antea.*]

To prove as an exhibit a letter written by one of the defendants.

3d. Look upon the letter or paper-writing now produced and shown to you at this the time of your examination marked with the letter (B), and the superscription or direction thereof; Whether or no are you by any and what means acquainted with the character and manner of hand-writing of the said defendant I. D., and whether or no is the body of the said letter or paper-writing and the name I. D. appearing to be set and subscribed thereto and the superscription or direction of the said letter or either and which of them of the proper hand-writing of the said defendant I. D. as you know or believe? Declare, &c.

4th. [*To prove the particulars of a conversation between the plaintiff and one of the defendants, and an offer made by the plaintiff to pay part of the consideration money; see the 3d interrogatory inserted in p. 699, antea.*]

To prove by the examination of the solicitors employed in negotiating the treaty between the defendants, by whom they were employed, that they received directions from

5th. Whether or no did you at any time and when treat with or enter into any agreement with the said defendant I. D. for the sale by him of the — public-house at E. in the pleadings of this cause mentioned, to the defendant T. R. C.? If yea, When and by whom were you employed to enter into such treaty and agreement, and when and from whom respectively did you receive all and every your instructions or directions as to such treaty or agreement? And in particular did you ever and when receive any instructions or directions respecting such agreement from D. W. and W. H. the partners of the said defendant T. R. C. or either and which of them? And whether or no pending such treaty, or after the said agreement

was concluded, and before the purchase-money was paid by the said defendant T. R. C. pursuant to such agreement, did you know or believe or had you any intimation that the agreement in the pleadings in this cause set forth or any agreement had been entered into between the said complainant and the said defendant I. D. as to the sale of the said public-house called the — by the said I. D. to the said complainant; and when and from whom and upon what grounds did you know or believe the same, or when and from whom did you receive such intimation? And did you at any time and when before the said agreement was concluded or before the said purchase-money was paid by the said defendant T. R. C., inform the said defendant of such your knowledge or belief, or of such intimation, and if not, why? Set forth, &c.

\*6th. Whether or no did you ever and when treat or agree with the defendant I. D. for the sale by him of the — public-house at E. in the pleadings of this cause mentioned, to the defendant T. R. C. or employ any person or persons and whom in any such treaty or agreement, or did you ever and when and to whom give any and what instructions or directions as to such treaty or agreement? And whether or no did you so treat or agree with the said defendant I. D. or so employ such person or persons in such treaty or agreement, or give such instructions or directions as to such treaty or agreement by the previous authority of the said T. R. C., or with his privity or approbation; or did he after you had so treated or agreed, or so employed such person or persons, or given such directions or instructions, know and approve of the same, or how otherwise? And whether or no pending the treaty with the said defendant I. D. for the sale of the said public-house to the said defendant T. R. C. or after the agreement for such sale was concluded, and before the purchase-money was paid by the said T. R. C. pursuant to such agreement, &c. [*the same as the concluding part of the former interrogatory.*] Set forth, &c.

7th. Whether or no did you on any day and when in particular in or about the month of — dine in company with the said complainant at the public-house at B.? And whether or no did the said complainant then say to you or to any other person and whom in your presence or hearing, that he had made any agreement for the purchase of the public-house called the — at E. in which he lived, or to any such and what effect? And whether or no was the agreement between the defendants I. D. and T. R. C. as to the sale of the said house then concluded, or had the said T. R. C. then paid his purchase-money for the said house to the said I. D. as you know or believe? And whether or no did you mention or give any intimation to the said T. R. C. of what the said complainant had then said before the said agreement was concluded between the said defendants I. D. and T. R. C., or before the said purchase-money was paid by the said T. R. C., and if not why? Set forth, &c.

8th. Whether or no did you ever and when and how often and at what particular times in or about the month of —, and whether alone or in company with any other person and whom, call at the house of the said complainant and ask to look at the agreement which

the partners of the defendant T. R. C., and that pending the treaty or before the purchase-money was paid they received an intimation that the plaintiff and I. D. had entered into an agreement, and whether they informed T. R. C. of it.

[\*751]

To prove by the examination of the partners of the defendant T. R. C. whether they entered into or employed other persons and whom to enter into a treaty with the defendant I. D. for sale of the premises whether they had the previous authority of T. R. C. or whether he afterwards knew or approved of it.

To prove that at a dinner the plaintiff informed one of the partners of T. R. C. that he had agreed for the purchase of the premises, and whether the agreement between the defendants was then concluded or the purchase-money paid, and whether witness informed T. R. C. of what he had heard.

To prove by the examination of one of the partners of T. R. C. that he frequently called at the plaintiff's house to look at his agreement, that he took the same away and how long he kept it, and

[\*752]

what passed when he returned the same;

Also to prove whether when he first had any conversation with the plaintiff respecting his agreement or took the same away, the agreement between the defendants had been entered into or concluded, or the purchase-money paid.

he had entered into for the purchase of his house, or to any such and what effect? Or have you had any other and what conversation with the said complainant respecting any such agreement? And whether or no did you or any other person and who in your presence at any and which of such times see the said agreement? And whether or no did you or any other person and who in your presence, at any and which of such times desire to take the said agreement away and allege any and what reason for so doing, or actually take the said agreement away and allege any and what reason for so doing? And for how long did you or such other person keep such agreement, and for what reason? And when did you or such other person return the same to the said complainant? And whether or no did you or such other person when the said agreement was so returned \*to the said complainant, make any and what declaration as to the value that the said agreement would be of to the said complainant if he knew how to use the same, or to any such or any other and what effect? And whether or no when you first called at the house of the said complainant as aforesaid, and had any conversation with the said complainant respecting any such agreement as aforesaid, or when you or such other person took away such agreement as aforesaid, had the treaty for the purchase of the said public-house called the — by the said defendant T. R. C. been entered into with the said defendant I. D.? Or if entered into, had the same been concluded, or if concluded, had the purchase-money for the said house been paid by the said T. R. C. as you know or believe? Set forth the particulars at large according to the best of your knowledge remembrance and belief, and the truth declare.

Lastly. [*The concluding general interrogatory; see p. 688, antea.*]

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Interrogatories to be exhibited, &c. [*see p. 688, antea.*]

1st. [*As to knowledge of the parties; vide p. 687, antea.*]

As to witness's knowledge of N. L. deceased.

2d. Did you know N. L. in the pleadings named the said complainant's late grandfather deceased in his life-time and for how long before his death, and when or about what time did he die? Declare, &c.

As to witness's knowledge of the premises in question.

3d. Whether or no do you know and have you or not at any and how long time known or been acquainted with a message or tenement and premises situate, &c. now called or known by the name of, &c. and heretofore or formerly called or known by the name of, &c. and late or heretofore the estate of the said N. L.? Declare, &c.

To prove that N. L. sold the premises in question to the defendants and executed conveyances thereof to them; and that the de-

4th. Whether or no did the said N. L. ever and when in his life-time sell or dispose of the message or tenement and premises in the third interrogatory mentioned or inquired after to the said defendants or any and which of them, or to any and what other persons or person and whom by name, and for what sums or sum of money or for any other and what consideration; and were or was or not the same or any and what part thereof by any and what deeds or deed or otherwise and how conveyed and by whom and particularly

whether or not by the said N. L., to such purchasers or purchaser or any and which of them? Had or not such persons or person purchasers or purchaser or any and which of them at any and what time before or at the time of making such purchase or of the execution of the conveyance of the said premises or of the payment of the whole or any and what part of the purchase-money or consideration for the same, and by what means any and what knowledge notice or information that the title of the said N. L. to the said message or tenement and premises or any and what part thereof was defective, or that he had not full power or authority to sell or dispose of the same or of the inheritance thereof, or that \*any and what other person and who by name had any right title claim or interest thereto or therein or to or in any and what part thereof as you know or for any and what reason believe? Declare, &c.

defendants had previously thereto notice that N. L.'s title was defective and that some person claimed title to the same premises.

[ \*753 ]

5th. Whether or no had the purchaser or purchasers of the said message or tenement and premises in the said 3d interrogatory mentioned or inquired after or any or either and which of them at any and what time before or at the time of making such purchase or executing the conveyance of the said premises or of the payment of the whole or any and what part of the purchase-money for the same and by what means any and what knowledge notice or information that the complainant had any and what right title claim or interest thereto or therein or to or in any and what part thereof? Declare, &c.

To prove that the purchasers of the premises in question had notice of the plaintiff's claim thereto previously to the time of purchase or payment of the consideration money.

6th. Whether or no was the price or the sum of money paid by the said purchasers or purchaser of the said message or tenement and premises as in the said preceding interrogatory is mentioned and inquired after the full or utmost price or value thereof, or was or not the same and for what reason less and by how much less than the full value thereof in case a good title could have been made thereto to such purchasers or purchaser? Were or not the same premises purchased for some and what sum of money less than the real and full value thereof on account of some and what defect in the title of the vendors or vendor thereof and whom by name in the title thereto or therein, or was or not some and what deduction or allowance made out of the purchase-money for the same or such or some and what other account? Declare, &c.

To prove that the purchase money was less than the full value of the premises, and that an allowance was made thereout on account of the defective title.

7th. Whether or no did you ever and when on any and what occasion hear the said defendants or any and which of them say or declare anything and what touching or concerning their or any and which of their right or title to the aforesaid message or tenement and premises or any and what part thereof or any defect therein, or touching or concerning the right title interest or claim of any and what other persons or person and whom by name thereto or therein? Set forth all and every the particulars and when and where and before whom or in whose presence or hearing and upon what occasion the same or any of them were or was made; Had you or not ever and when any and what conversation with the said defendants or any and which of them touching their or any and which of their right

To prove declarations by, and conversations with the defendants relative to their title to the premises.

or title to the aforesaid premises or any and what part thereof? Declare, &c.

Lastly. [*The concluding general interrogatory; vide antea, p. 688.*]

To prove the particulars of a conversation between the plaintiff and defendant respecting the title of the plaintiff to a

[ \*754 house and ground previously to the agreement entered into for purchase.

Whether or no were you at any time or times and when previously to the agreement between the said complainant and the said defendant respecting the purchase by the said defendant of the house and premises of the said complainant at — present at any conversation or conversations which passed between the said complainant and the said defendant upon the treaty for the said purchase? If yea, Set forth the particulars of such conversations and what was \*said therein by the said complainant to the said defendant respecting his title to the said premises; and whether anything and what was said by the said complainant to the said defendant as to the title to the newly-enclosed ground in front of the said premises; Set forth all and every the matters and things aforesaid according to the best of your knowledge remembrance information and belief.

To prove a proposal made by the defendant to be released from his contract for purchase.

Whether or no at any time and when after the agreement between the said complainant and the said defendant respecting the said purchase, did the said defendant desire you to communicate to the said complainant any proposal on his part as to his being released from the said agreement? If yea, Set forth the particulars of such proposal, and when and upon what occasion the said defendant made the same; Set forth, &c.

To prove that previously to the agreement for purchase witness communicated with the plaintiff as to the defendant's title, and that the plaintiff stated that there existed objections to the title by reason that certain persons claimed an interest in the premises: also to prove what was the plaintiff's object in making such objections.

Whether or no had you at any time and when previously to the making of the agreement of the — day of — in the pleadings in this cause stated, and upon what occasion any and what communication with the said complainant as to the title of the said defendant to the premises comprised in the said agreement? And did the said complainant at any time and when and upon what occasion previously to the making of the aforesaid agreement, state to the said defendant or to you or to any other person and whom as the solicitor or agent of the said defendant that there existed any and what objections to the title of the said defendant to the said premises, and in particular any and what objections by reason that one R. B. had not joined in the conveyance of the said premises to the said defendant, or any and what objections by reason that one A. S. claimed to have some right or interest in the said premises, and for what purpose did the said complainant state the said objections to the title of the said defendant to the premises, and had the said objections any and what effect as to the price which the said defendant agreed to accept from the said complainant for the said premises? Declare, &c.

To prove that

Did or not J. A. the defendant in the title to these interrogatories

named, at any and what time sell to any and what person or persons by name any and what part of the premises in the last interrogatory mentioned? If yea, Set forth for what price, and what sum or sums of money the said defendant received as the consideration thereof; Declare, &c.

the defendant has sold part of the premises in question and at what price.

\* Did you at any time and when act as an auctioneer and put up to sale by auction the estate in the pleadings in this cause mentioned, and was or not the said estate sold in lots, and did you or not at the time of such sale and before the putting up of any of the lots produce some and what plan or particular of the said estate, and did you at or before the said sale make any and what declaration concerning the lots so to be put up to sale or concerning the plan or particular of the said estate? Declare, &c.

To prove that witness as auctioneer sold an estate, and the plan produced at the time of sale.

\*\* Were you at any time and when and by whom and on whose behalf employed to sell by public auction or otherwise a certain freehold estate situate, &c. in the pleadings of this cause mentioned? If yea, Did you prepare or cause to be prepared any plan or particular of the said estate, or was any plan or particular of the said estate prepared? If yea, Where was such plan or particular left, and was the same open for the inspection of persons who might be desirous of buying the said estate or any part thereof? And was the sale of the said estate advertised, and was any and what plan or particular referred to in such advertisements, and were or not the respective lots marked or described in such plan or particular? Declare, &c.

[ \*755 ]  
To prove that witness was employed as auctioneer to sell an estate and that he prepared the plan thereof referred to in the advertisements, and that the same was left open to the inspection of persons desirous to purchase.

\* Did you know J. O. late of ——— deceased, in his life-time, and for any and what length of time previously to his decease? Was he or not at any time in the service or employ of the said Bristol Dock Company? If yea, In what station or capacity and for what length of time was he so employed by the said Bristol Dock Company? Declare, &c.

To prove that a deceased person was in the defendant's service, and in what capacity.

Whether or no have you now and have you for any and what time had any and what situations or office, situations or offices in or about his Majesty's Treasury, or connected with the business thereof, and whether or no have you by means of such office or situation, or by any other and what means had any opportunity to become acquainted, and are you in any and what degree acquainted with the duties employment and profits of the Treasury messengers? Declare, &c.

To prove what situation witness holds in his Majesty's Treasury, and his knowledge of the duties and profits of the treasury messengers.

Whether or no were you intimately or otherwise and how acquainted with F. G. and A. B. who were lately two of the said Treasury messengers but are now deceased, and for how long did you severally know them, and what was the situation of the said A. B. before he was appointed a Treasury messenger, and was he before such appointment a person of property or reputed to be a person of property or how otherwise? Declare, &c.

To prove what situation a person held before he was appointed a treasury messenger, and whether he was reputed to be a man of property.

be a man

To prove that witness had a relation who was employed as a treasury messenger, that another messenger received the moneys due to him, and what was the state of accounts between them at the decease of such person.

Whether or no had you any and what relation or connection who was a Treasury messenger at the same time with the said F. G.? And If yea, Did the said F. G. receive the moneys which were due to such your relation or connection in his employ of messenger, in the same manner as he received the moneys due to the said A. B., and did the said F. G. from time to time pay over to such your relation or connection the moneys which he received from him, or what was the state of the accounts between them at the death of the said F. G.? Declare, &c.

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To prove the death of a person, and when

[ \*756 ] first and how long witness was acquainted with him, when first and in what capacity witness lived with him, and the circumstances and situation in life of the deceased during the respective periods that witness was acquainted with him, and lived in his service.

\* Whether or no did you know or were you acquainted with S. D. of —, deceased (in the pleadings of this cause named) in his life \*time? If yea, When and where did he die? And for how long time did you know him or were you acquainted with him before the time of his death? And when and where did you first know or become acquainted with him, and for how long time or to what time did you continue acquainted with him? Did you or did you not live or reside with the said S. D. in his life-time? If yea, When and where and for how long time and in what rank station or capacity did you live, or reside with or serve the said S. D. in his lifetime? And in what circumstances and situation in life at the time when you first knew or became acquainted with the said S. D., and from time to time during the time that you knew or were acquainted with him, was the said S. D., and in what circumstances and situation in life at the time when you first lived or resided with or served the said S. D. and from time to time during the time you lived or resided with or served him was the said S. D.? Declare according to the best of your knowledge remembrance and belief, together with the grounds or reasons on which your belief is founded.

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To prove within what parish two pieces of land are situate or reputed to be situate, and to what parish the poor's rates or tithes have been paid.

Whether or no do you know and for how long have you known two pieces of land called the forty acres, which are now in the occupation of R. B. of the said parish of W. farmer? If yea, Within what parish are the said pieces of land situate as you know or for any and what reason or reasons believe, and whether or no have you ever and when heard from any person or persons and whom who are now dead within what parish the said two pieces of land are situate? And whether or no do you know to what parish the poor's rates or tithes have been paid for the said two pieces of land, and when and by whom and to whom? Declare, &c.

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To prove a survey made of an estate,

Whether or no did you ever and when and by whose employment make a survey and admeasurement of certain lands called the S. situ-



ate in the parish of C. in the county of —? If yea, Of what number of acres do the said lands consist? Declare, &c.

and of what number of acres it consists.

Whether or no did the said defendants or either and which of them, or any and what person or persons on their or either and which of their behalf, at any times or time and when, or about what times or time particularly, and whether before or after the — day of —, tender or offer to pay or satisfy unto any and what persons or person any and what sums or sum of money in or towards discharging any and what legacies or legacy given by the will of —? Were or was or not any and what securities or security, and from and to whom, for payment of any and what sums or sum of money, produced and by whom at all or any and which of such times? Did the persons to whom such, if any, tender was offered or made at any or either and which of such times agree or refuse to \*accept the money or other satisfaction so offered, and how and in what manner did he she or they at such time or times express or declare him or herself or themselves relating thereto? Declare, &c.

To prove a tender of money or of securities in payment or discharge of legacies, and whether the same was accepted or refused, and what passed relative thereto.

[ \*757 ]

\* Did or not the said F. E. in the pleadings in this cause named in his life-time and from and up to what time in particular carry on any and what trade or dealing and in what sort of merchandize? Declare, &c.

To prove a deceased person having been a trader within the meaning of the bankrupt laws.

Of what trade or profession are you? Do you know the copyhold premises in the pleadings in this cause and in the 5th interrogatory mentioned, and how long have you known the same? Of what annual value were the same when J. A. the defendant in the title to these interrogatories named first took possession of the same as you know or for any and what reason believe? Of what annual value are the same now, and particularly what is the annual value of such part thereof as remains in the possession of the said J. A.? Declare, &c.

To prove the annual value of premises at the time the defendant took possession, and also their present value.

\* Are you or not acquainted with the parish of W. and the rectory of W. described in the particular of the estate in the pleadings of this cause mentioned? If yea, Do you or not know and by any and what means what was the value of the advowson of the said rectory on the 4th of October 1821, and how do you calculate and make out such value? Declare, &c.

To prove the value of an advowson.

Whether or no were you at any time and when employed by — to estimate the value of the estate and premises described in the printed particular of sale marked (A) now produced, &c.? If yea, Did you form your estimate of the value from any actual survey and admeasurement or from any and what other information respecting the quantity of lands to be sold, and in particular in forming such valuation at what quantity did you compute certain lands part of the said estate called the —? And whether or no should you

To prove the estimated value of an estate; at what quantity witness computed certain lands, and in what degree it would have

reduced the estimate if the witness had known that certain lands contained less than they were computed at.

in any and what manner have reduced the estimate of the value of such estate and premises if you had known the said lands called the ——— contained a less number of acres than they were so computed at by you?

To prove the valuation of the reversionary interest in houses after the expiration of existing leases previously to the sale thereof,

\* Did you previously to the time of the sale of the estate in the pleadings of this cause mentioned make any and what estimate of the value of the reversion of the said houses or lots after the expiration of the leases under which the said houses were held? And if yea, How did you make such estimation or valuation, and was or not in particular the valuation of lot 10 or the houses comprised in such lot higher than the valuation of some other lot containing the same number of houses and let at the same rents, and what was the reason of such difference in the valuation of such reversion? Declare, &c.

[ \*758 ] that the valuation of one lot exceeded another lot containing the same number of houses and let at the like yearly rents, and the reason of such difference.

To prove the cancelling of a will.

\* Do you know whether the said T. M. in the 1st interrogatory named ever and when and in whose presence cancelled any will or testament made by him and of what date in particular? And if yea, Were you present at the time, and did the said T. M. inform you or make any declaration why he cancelled such will or testament? And set forth the particular words or declarations used or made by the said T. M. as the reasons for his cancelling such will or testament as nearly and fully as you can recollect the same? Declare, &c.

[ *To prove the execution of wills, see p. 727, antea.* ]

### SECT. III.

FORMS OF INTERROGATORIES FOR THE EXAMINATION OF PARTIES, AND ALSO FOR THE EXAMINATION OF CREDITORS AND THEIR WITNESSES, AND OTHERS, UNDER DECREES AND DECRETAL ORDERS.

*Interrogatories for the examination of the personal representatives of an administrator as to his intestate's estate and effects exclusive of his share in a partnership business, and also to the debts which were owing by the intestate.*

Between, &c.

Interrogatories to be examined, &c. [ *For a form of title, vide antea, p. 685.* ]

1st. Whether or no was R. P. the intestate in the pleadings in

this cause named at the time of his death possessed of or entitled to any personal estate and effects other than and besides and exclusive of his part share or interest in the copartnership trade and business in the pleadings in this cause mentioned, and the stock and effects belonging thereto? If yea, Set forth a full true and particular inventory and account thereof and all the particulars whereof \*the same consisted, and the full true and utmost value thereof, and all the particulars thereof which were possessed by you or any and which of you and by any other person or persons by your or any and which of your order and for your or any and which of your use, or by the said late defendant T. P. or any other person or persons by his order or for his use in his life-time, and how and in what manner the same were and have been applied or disposed of, and also an account of all and every sums and sum of money received by sale or on account of the said intestate's personal estate and effects other than and independent of or distinct from his share interest or concern in the co-partnership trade or business in the pleadings in this cause mentioned or the stock or effects belonging thereto, or otherwise on account of the said separate personal estate and effects of the said intestate, and when by whom and of whom for what and on what account or accounts the same and every part thereof were or was so received, and whether any and what part or particulars of the said separate personal estate and effects of the said intestate remains or remain outstanding or unreceived.

[ \*759 ]

2d. Whether or no was the said intestate R. P. at the time of his death separately indebted to any persons or person besides or exclusively of the debts owing from him as a partner in the aforesaid copartnership concern or business? If yea, Set forth a full true and particular account of all and every such debts; Have you or not or have or hath or not any and which of you or any persons or person by your or any and which of your order or on your or on any and which of your behalf paid laid out or expended, and did the said late defendant T. P. or any other person or persons by his order or on his behalf in his life-time pay lay out or expend any and what sums or sum of money in or towards the discharging of all or any and which of such debts or of the funeral expenses of the said intestate R. P.? If yea, Set forth a full just true and particular account of all and every such sums or sum of money, and when and by whom and to whom and for what or on what account or accounts the same and every part thereof were or was so paid laid out or expended.

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*An interrogatory for the examination of an agent or steward.*

Whether or no were you in the life-time of the said testator T. D. and for how long time before his death empowered by him or any other person and whom to let and sell all or any and what part of the freehold and leasehold estates of the said testator and to receive the rents and profits thereof, or do you otherwise and how know of what freehold or leasehold estates the said testator died seised or pos-

To prove whether the examinant was empowered by the testator to let and sell his freehold and leasehold es-

tates and to receive the rents thereof; Also to prove the particulars of such es-

[ \*760 ]

tates, how long the examinant has been in possession of any part, what rents have been received by him and what remain in arrear, and also as to what moneys have been expended on the estates.

sessed or entitled unto? If yea, Set forth a full true and just rental description and particular thereof, and where the same and every part thereof are situate, and the yearly value of each particular thereof, and in whose tenure or occupation the same and every part thereof then was or since has been and now is, and under what leases or terms of years, if any, and at what yearly or \*other rent or rents; And set forth for how long time you have been in possession or receipt of the rents and profits of such freehold and leasehold estates or any and what part thereof, and by what right and title and for whose use; And also set forth a full true and particular account of all and every sum and sums of money which have been received by you or any other person or persons by your order or for your use for or in respect of the rents and profits of the said estates or any part thereof which have or hath become due since the death of the said testator, and what and by whom and for whose use and for what rent and of what part of the said estates and when due all and every such sums were respectively received, and whether any and which of such rents and profits are now in arrear, and if so, why; And also set forth a full true and particular account of all and every the sum and sums of money which have been from time to time paid and disbursed by you since the death of the said testator for or on account of the said freehold and leasehold estates of the said testator, and when and to whom and for what all and every such sums were respectively paid and disbursed; Set forth, &c.

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*Interrogatories for the examination of a defendant before the Master, to prove the number and age of her children and when baptized.*

Between B. B. and others, . . Plaintiffs,  
and

T. A. and others, . . Defendants.

Interrogatories exhibited on behalf of the plaintiffs before J. S. H. esq. &c.

1st. Whether or no were there any children living of the marriage between you and your late husband W. A. in the pleadings in this cause named at the time of his death, and what were their respective names, and when and where were they severally born, and are or is any or either and which of them since dead, and when did he she or they die?

2d. Whether or know were they or any or either and which of them at any time or times and when and where and by whom baptized, and whether or no were or was any entries or entry at any time or times and when made in any registers or register of any and what parish church or churches or chapels or chapel or other places or place as to the birth and baptism of all or any or either and which of them?

*\*Interrogatories for the examination of creditors  
and their witnesses.*

Between A. B. and C. D. complainants,  
and  
E. F. and G. H. defendants.

Interrogatories exhibited by the complainants before W. G. esq. one of the Masters of this honorable court, for the examination of the creditors of T. H. esq. deceased in the pleadings in this cause named and of their witnesses, in pursuance of the decree and order of this court made on the hearing of this cause on the 8th day of March 1781.

\* 1st. Was the said T. H. in his life-time and at the time of his death indebted to you in any and what sum or sums of money on any and what account, and have you or have you not at any time or times and when and from whom received any and what satisfaction for the same or any part thereof, and is the same and every or any and what part thereof still justly due and owing to you? Declare, &c.

To prove the debts due to the exami-  
nants at the  
time of the in-  
testate's  
death, and  
whether any  
part thereof  
has been sat-  
isfied.

\* 2d. Was the said T. H. in his life-time and at the time of his death indebted to you in any and what sum of money for principal and interest due to you on mortgage or other security or securities made from him to you, and when does or do such mortgage deed or other security or securities bear date, and for what consideration was or were the same made and by and before whom and when executed, and who is or are the subscribing witness or witnesses to the execution thereof, and have you or have you not or any other person and whom on your account or behalf and when received such principal money and interest or any and what part thereof, as you know have heard and believe? Declare, &c.

To prove what  
moneys are  
due on mort-  
gages or other  
securities and  
the particu-  
lars thereof.

\* 3d. Was the said T. H. in his life-time and at the time of his death indebted to you in any and what sum or sums of money on any and what judgment, and when was the same confessed or recovered by you or whom else in any and what court against the said T. H., and have you or have you not or any other person and who on your account or behalf or on any other account and when and from whom received any and what satisfaction for the same or any and what part thereof, and is the same and every or any and what part thereof still justly due and owing as you know and do believe? Declare, &c.

To prove what  
moneys are  
due on judg-  
ment, and  
when such  
judgment was  
confessed.

\* 4th. Was the said T. H. in his life-time and at the time of his death indebted to you in any and what sum or sums of money on any and what bond or other security made and entered into by him to you or any other person or persons and whom by name, and when was the same so made and given and for what consideration or on what account and in what penalty, and what was the consideration thereof, and when does the same bear date, and hath or hath not the same

To prove what  
moneys are  
due on bond.

[ \*762 ]

been and when paid off and discharged, or is any and what part thereof still justly due and owing to you or whom else on the said bond as you know have heard and do believe? Declare, &c.

To prove what moneys are due on promissory notes.

\* 5th. Was the said T. H. in his life-time and at the time of his death indebted to you in any and what sum or sums of money on any and what promissory or other note, and when and for what consideration was the same so made or given or indorsed to you or whom else by the said T. H. and what is the date thereof, and hath or not the same and every or any and what part thereof been and when paid off and discharged, or is the same or any and what part thereof still justly due and owing to you or whom else as you know have heard and believe? Declare, &c.

To prove what is due for goods sold and delivered.

\* 6th. Was the said T. H. in his life-time and at the time of his death indebted to you in any and what sum or sums of money on any and what book debt or debts for any and what goods sold and delivered by you to him or by his order or for his use or on his account, and at what particular time or times were the same so sold and delivered by you to him or by his order or for his use, and what was or were the particular or particulars thereof, and hath or have or not the same or some and what part or parts thereof been and when paid off and discharged, and is or are the same and every or any and what part or parts thereof still remaining justly due and owing thereon? Declare, &c.

To prove what is due for work and labor.

\* 7th. Was the said testator T. H. in his life-time and at the time of his death justly and truly indebted to you in any and what sum or sums of money for work and labor done and performed by you and your journeymen and servants or any of them and for materials and things found and provided by you and used in and about such work for the said T. H. or by his order, and when where and at what place or places? And have you or have you not or any other person or persons and who on your account or behalf or on any other and what account and when and from whom received any and what satisfaction for the same or any and what part thereof, and is the same and every or any and what part thereof still justly due and owing to you or whom else as you know and do believe? Declare, &c.

To prove what is due to the deceased's solicitor.

\* 8th. Was the said T. H. in his life-time and at the time of his death justly and truly indebted to you in any and what sum or sums of money for business done by you, and for your fees and for money necessarily paid laid out disbursed and expended by you and when for him or on his account or behalf in any and what business, and have you or have you not or any other person or persons and who on your account and behalf or on any other and what account and from whom and when received any and what satisfaction for the same or any and what part thereof, and is the same or any and what part thereof still justly due and owing to you or whom else as you know or do believe? Declare, &c.

To prove the execution of bonds and other exhibits by the sub-

\* 9th. Was or were the bond or bonds or other writing or writings marked — now produced and shown to you at this the time of your examination or any and which of them signed sealed or executed in your presence and by whom? Were you or not a witness to the signing \*sealing or executing such bond or bonds or other writing or writings

or any and which of them? Is your name set or subscribed as a witness to the same respectively, or any and which of them, of your own proper hand-writing, and is or are the name or names of the other subscribing witness or witnesses thereto of his their or any and which of their own proper hand-writing or not? Declare all that you know or believe concerning the same.

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*Interrogatories for the examination of a person claiming to be a creditor, to prove the actual consideration of a bond, and under what circumstances the same was executed; also as to loans of moneys in the examinant's charge stated to have been lent, and as to an agreement made with him for the passage of a woman and two children on board a vessel.*

Between B. M. widow, and others, Plaintiffs,  
and

B. N. and others, . . Defendants.

Interrogatories exhibited on behalf of the said defendants before J. S. esq. one of the Masters of this honorable court to whom this cause stands referred, for the examination of T. S. esq. who claims to be a creditor of the testator G. S. in the pleadings of this cause named, pursuant to the decree made in this cause bearing date the — day of —.

1st. When and where and in whose presence did the said testator G. S. execute the bond to you for the sum of —l. in your charge mentioned, and at what time of the day was such bond executed and was it not after dinner, and was the said G. S. then intoxicated or in any and what degree heated with liquor, and was not the said G. S. addicted to drinking, and by whom was such bond prepared, and when in particular, and by whose directions, and what was the consideration of such bond; and if you allege that the consideration was for moneys advanced or paid by you to or for the use or on the account of the said G. S., then set forth when and where and in what manner and in whose presence and to whom such moneys and every part thereof were so advanced and paid? Did not the said G. S. pay to you the sum of —l. for his passage from — to — before or upon or soon after his coming on board your ship, and did not the said G. S. bring on board with him the further sum of —l. or thereabouts, or some other and what further sum as you know or believe, and how happened it therefore that the said G. S. had occasion for the said sum of —l., and how did he spend the same, and what did he do therewith?

To prove under what circumstances a bond was executed, and the consideration thereof; Whether the obligor was not intoxicated at the time he executed the same, and whether he had any occasion for the sum alleged to have been lent, for the securing whereof the bond was executed.

2d. When and where and in whose presence did you pay to Mr. S. in your charge named, the sum of —l. therein mentioned, and when and where and in whose presence did the said G. S. request

To prove the time of payment of a sum in the exami-

nant's charge alleged to be due to him and to have been paid over to another person.

To prove the mode and time of advancement of other sums in the examinant's charge stated to have been lent.

To prove the date of the agreement for the passage of a woman and two children, how they were treated, and the difference in the rate of payment for the passage of a woman and two children table.

\*you to pay the same, and when and how did the said G. S. become indebted in the said sum of —£. to the said Mr. S. ?

3d. When and where and in what manner and in whose presence did you advance to the said G. S. the sum of —£. and every part thereof in your said charge stated to have been lent by you to the said testator at —, and how did the said G. S. spend the same, or what did he do therewith? When and where and in what manner and in whose presence did you advance to the said G. S. the sum of —£. and every part thereof in your said charge stated to have been lent by you to the said G. S. at —, and for what purpose did he require such loan?

4th. When and where and in whose presence was the agreement made between you and the said G. S. for the passage of Mrs. M. and her two children from — to —? Did the said Mrs. M. or her children dine at your table on the passage, or were they not treated by you as common passengers, or how otherwise? And what is the usual and customary payment for the passage of a woman and two such children from — to —, who are treated as common passengers or one treated as the said Mrs. M. and her two children were treated by you, and what is the usual and customary payment for such a passage for a woman and two such children who dine at the captain's table?

where they are treated as common passengers, or where they dine at the captain's

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*As to the existence of a bond, and what has become of the same; also to prove the hand-writing, and acknowledgments or admissions made by the obligor.*

Between, &c.

Interrogatories exhibited on behalf of W. T. and E. T. who claim to be creditors of the said defendant, before S. T. esq. one, &c. to whom this cause stands referred, for the examination of W. L. for the proof of their debt, pursuant to, &c.

To prove the existence of the bond.

1st. Whether or no have you at any time and when and for how long had in your custody possession or power, or have you at any time or times and when respectively seen in the custody possession or power of any other person or persons and whom, a bond or obligation in writing executed or purporting to be executed by the present Marquess of D. by his then name of Earl of B. of the date and in the words and figures or to the purport and effect hereinafter set forth, or any other and what bond executed or purporting to be executed by the said Marquess of D. by his then name of Earl of B. to J. F. T. the wife of W. T. of M. by her then name of B. of any other and what date, or in any other and what words and figures,



or to any other and what purport and effect? [*Setting forth the bond.*]

2d. Whether and from whom and upon what occasion did you receive such bond or obligation if the same hath ever been in your custody \*possession or power, and what is become of the said bond, and where is the same now or was when you last knew thereof, and to whom and when and upon what occasion did you give up the custody possession or power of the said bond? Or if the said bond hath never been in your custody possession or power, and upon what occasion or occasions did you see the same in the custody possession or power of any other person or persons; and what is now become thereof as you know or for any and what reason believe?

To prove from whom witness [ \*765 ] received the same, and to whom he delivered it, and what has become of the same.

3d. Are you acquainted with the character of the hand-writing of the said Marquess of D., and have you ever seen the said Marquess write, or by what other means did you become acquainted with the character of his hand-writing, and whether or no do you believe that the name "B——" set and subscribed in the said bond or obligation was of the proper hand-writing of the said Marquess, or if not why, and whether or no was the name of any attesting witness and whom set and subscribed to the said bond, and are you by any and what means acquainted with the character of the hand-writing of such attesting witness, and was such name of his proper hand-writing, and is such attesting witness now living or dead, and when did he die? And do you know of whose hand-writing was the body and condition of the said bond?

To prove the hand-writing of the signature to the bond, and of the attesting witness, and also the hand-writing of the body of the bond.

4th. Whether or no was any instrument or other authority produced to you whereby the said Mrs. T. the obligee in the said bond authorized and empowered any other person and whom to receive the money due on the said bond, or otherwise to discharge the same? If yea, Set forth the particulars of such instrument or other authority, and what hath become thereof.

To prove whether the obligee in the bond gave authority to any person to receive the money due thereon.

5th. Whether or no have you at any time or times and when and upon what occasion or occasions had any conversation with the said Marquess of D. upon the subject of the said bond, or have you at any time or times and when and upon what occasion or occasions heard the said Marquess of D. speak of the said bond; and whether or no did the said Marquess of D. upon such occasion or occasions acknowledge or admit that he gave the said bond for the proper use and benefit of the said Mrs. T. or how otherwise?

To prove acknowledgments or admissions made by the obligor that he gave the bond for the obligee's own benefit.

6th. Look upon the letters or paper-writings now produced, &c.; Of whose hand-writing are the said letters or the signatures and superscriptions thereto respectively as you for any and what reason know or believe?

To prove letters as exhibits.

*\*Interrogatories for the examination of executors before the Master.*

Between A. B. . . . Plaintiff,  
 and  
 C. D., &c. . . Defendants.

Interrogatories exhibited on behalf of the said plaintiff before I. E. esq. one of the Masters of this honorable court, for the examination of the defendants pursuant to the decree made in this cause bearing date the — day of —.

As to the particulars of the personal estate and the application thereof by the examiners, and also as to the debts due to the testator at the time of his death, and what moneys have been received in discharge thereof.

Whether or no was D. W. deceased in the pleadings of this cause named at the time of his death possessed of or entitled to or interested in any and what goods chattels personal estate and effects as you know or for any and what reason believe? If yea, Set forth a full true and just inventory and account thereof and of every part thereof and of all the particulars whereof the same consisted, and the quantities qualities full real and true valuations of all such particulars; And whether or no were all or any and which of such particulars and to what amount and value possessed or received by or come to the hands of you or one and which of you or any and what persons or person by the order or for the use of you or one and which of you, and how and in what manner and when and where and by whom and for how much have or hath the same and every or any and what part thereof been sold or disposed of, and whether any and what parts thereof and to what value and amount now remain undisposed of, and what is become thereof? Whether or no were any and what sums of money due or owing to the said D. W. at the time of his death? If yea, Set forth a full true and particular account of all and every such sums, and from whom and for what the same were respectively due, and whether on any and what securities or security and whether carrying interest or not and at what rate, and how much was due for interest thereon respectively at the time of his death; and also a full true and just account of all and every sums and sum of money from time to time received by or by the order of or for the use of you or either of you in or towards the discharge of such debts or any of them or the interest thereof or of any of them since the death of the said D. W., and when and by whom and for whose use and for what all and every such sums were respectively received; and what sums or sum of money still remain due in respect thereof or of the interest thereof or of any of them and from whom, and why such sums have not been gotten in and received, and where do the persons from whom the same are respectively due live and reside? Set forth all the matters aforesaid according to the best of your respective knowledge remembrance information and belief.

As to the debts owing

Whether or no was the said D. W. at the time of his death indebted to any and what persons or person in any and what sums

\*or sum of money? If yea, Set forth a particular account of all and every the debts whatsoever which were then justly due and owing from him, and to whom and for what and on what security (if any) the same were respectively due; and whether any and what sums or sum of money have or hath been since paid by you in or towards the discharge of all or any and which of such debts and when and to whom and for what; and whether any and what sums or sum of money do or doth now remain unpaid on account thereof; Whether or no were or was any and what sums or sum of money paid and disbursed by you for or on account of the funeral expenses and debts of the said testator or otherwise in relation to his estate, and when and by whom and to whom and for what were all and every such sums respectively paid? Set forth, &c.

by the testator, and what moneys have been paid towards the discharge thereof, and of his funeral expenses.

Whether or no was the said testator at the time of his death possessed of or entitled to any leasehold property? If yea, Set forth the particulars of which the same consisted and where the same and every part thereof was situate, and by whom and for what term or terms of years and under what yearly or other rent or rents the same and every part thereof was held at the death of the testator, and whether any and what sums or sum of money have been received by you or either of you in respect of such rent or rents and when and from whom and for what rents respectively; And whether or no have you or either and which of you sold any and what part of the said testator's leasehold property? And if yea, When and to whom and for what was the same sold, and what sum or sums of money hath or have been received by you and either and which of you in respect of such sale, and when and from whom and for what was or were such sum or sums received, and what now remains due in respect of such sale, and why the same is outstanding and unpaid? And set forth also a full true and particular account of the stock in trade which the said testator was possessed of or entitled to at his death, of what the same and every part thereof consisted, and what at the said testator's death was the full and true value of each and every part thereof; And set forth also a full true and particular account of the moneys produced by the sale of such stock in trade, and when and to whom and for what the same and every part thereof was sold or what became thereof; Set forth all and every, &c.

As to the testator's leasehold property, what rents have been received therefrom, and what parts have been sold;

also as to the testator's stock in trade, the value thereof, and what moneys have been received by sale thereof.

Whether or no was the said testator J. B. at the time of his death seised of or otherwise and how entitled to any and what freehold and copyhold estates? If yea, Set forth a full true and just rental description and particular thereof, and the number of acres thereof respectively, and where the same and every part thereof is situate, and the yearly value of each particular thereof, and in whose tenure or occupation the same and every part thereof respectively then was or since has been and now is, and under what leases or terms if any, and at what yearly or other rent or rents; And set forth also whether any and which of such estates or any and what part thereof have or

As to the freehold and copyhold estates to which the testator was entitled, what parts have been sold, and how the purchase money has been applied; also as to what

rents have  
been received,  
and what re-  
main in ar-  
rear.

\*hath since the death of the said testator J. B. been sold and disposed of, and when and where and by and to whom and for how much every particular thereof hath been sold and disposed of, and whether at the full and utmost value thereof, and if not, why, and how and in what manner the money arising from the same hath been paid and applied; And set forth also a full true and particular account of all and every sum and sums of money which have been from time to time received by you or any or either and which of you or by any other person or persons by your or any or either and which of your order or for your or any or either and which of your use for or in respect of the rents and profits of the said freehold and copyhold estates and every or any part thereof which were due and owing at the death of the said testator or which have since become due, and when and by whom and from whom and for what all and every such sum and sums were respectively received, and whether any and which of such rents and profits are now in arrear, and if so, why?

As to what  
money has  
been received  
for principal  
and interest  
due on bond.

Whether or no have you been paid or in any manner satisfied any part of the principal money of —l. mentioned in the bond or obligation of T. B. the said testator bearing date, &c. or any part of the interest which hath accrued due thereon? If yea, Set forth the particulars and amount of all and every sums or sum which you have been so paid or satisfied and when respectively and by whom and in what manner.

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*Interrogatory for the examination of executors and trustees as to any personal estate got in or disposed of by them, and moneys received by sale of real estate and from the rents thereof since the time of the examinants putting in their answers to the plaintiff's bill.*

Hath not some and what part of the personal estate and effects of R. H. esq. deceased, the testator in the pleadings in this cause named, or of the produce of such personal estate, or of the money arisen by sale of his real estate or any part thereof, or in respect of the rents and profits of his real estate or of any part thereof, been possessed by or come to the hands of you or one and which of you, since the respective times of your respectively swearing to your respective answers in the plaintiff's bill in this cause? Set forth a full true and just account of all and singular such personal estate and the produce thereof which hath been so possessed or received by you respectively or by your respective order or for your respective use, or come to your respective hands since the time of swearing your said respective answers, and the natures kinds qualities and quantities and the full real and true value of all and every such particulars, and when and by whom and to whom all and every or any and which of such particulars have been sold or disposed of, and whether any and what part thereof remains undisposed of, and what is become

[ \*769 ]

\*thereof? Hath any and what part of the personal estate of the said

testator R. H. which remained undisposed of at the time of swearing your said respective answers being since sold or disposed of and when and by and to whom and for how much, and whether for the full value thereof, or how much under the full value thereof respectively, and what sums or sum of money have or hath been received for the same, and when and by whom and for whose use? Set forth also a full true and just account of all and every the sums or sum of money which have or hath been from time to time received by you or either of you, or by any persons or person by the order or for the use of you or either of you since the swearing of your said respective answers for or in respect of the produce or money arisen by sale of the real estate of the said testator or any part thereof, or the rents or profits of such real estate or any part thereof, and when and by whom for what and on what account all and every such sums were respectively received? Set forth all and every the matters and things aforesaid according to the best of your respective knowledge remembrance and belief.

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*Interrogatories for the examination before a Master of the executor and heir at law of a deceased defendant, who was the agent, steward, receiver, and manager of the estates in question.*

Between, &c.

Interrogatories exhibited, &c.

1st. Set forth according to the best of your knowledge and belief a full true and particular account of all and every the rents issues and profits and sums and sum of money arisen from rents issues and profits of the estates of the plaintiffs Viscountess S. and C. C. in the pleadings mentioned, situate in the several counties of, &c. or any of them, which have arisen or become due since the death of J. B. their mother, received by or come to the hands of the late defendant R. B. in his life-time, and you the now defendant R. B. as his heir at law and executor since his death, or any other person or persons by your or either of your orders, or for your or either of your use, or which without your or either or one of your wilful default might have been received thereout, with the times when and from whom and for what the same and each and every of them were respectively received or might have been received.

As to the rents received, or which without wilful default might have been received.

2d. Set forth in manner aforesaid a full true and particular account of all and every sums and sum of money paid laid out expended disbursed or allowed for repairs taxes and other outgoings in respect of the said estates or otherwise, to for or on account of the plaintiffs or any of them by the late defendant R. B. in his life-time, and you the now defendant R. B. since his death, or by any other person or persons by your or either of your order or on your or either of your account, with the times when and by and to whom and for what the

As to moneys laid out in repairs, &c.

\*same and each and every of them were so paid laid out expended disbursed or allowed.

As to what parts of the estates have been sold, and the moneys received therefrom;

3d. Set forth in manner aforesaid a full true and particular account of all such parts of the said estates as were at any time or times sold since the death of the said J. B. the mother of the said plaintiffs, with the times when and to whom and for what prices respectively the same and every part thereof were or was sold, and also an account of all and every sums and sum of money arisen from such sales or sale received by or paid to the account of or in any wise come to the hands of the said late defendant R. B. or to the hands of his bankers or any other person or persons by his order or for his use, with the times when and from whom and for what all and every such sums and sum of money were or was received or paid; and also a full true and particular account of all timber which hath been cut down in or upon all or any part or parts of the said estates of the said plaintiffs Viscountess S. and C. C. at any time or times since the death of the said J. B. their mother, with the times when and the names of the particular woods fields grounds or places in which the same were cut, and the number of trees from time to time so cut, and the prices or value thereof respectively, and to whom the same were sold and by whom the same were cut down respectively from time to time; and also a full true and particular account of all and every sums and sum of money which at any time or times and when were received by or come to the hands of the said late defendant R. B. or any other person or persons by his order or for his use from such timber as aforesaid, or which without his own wilful default might have been received, and from whom and for what all and every such sums and sum of money were or was received.

\*Also as to what timber has been cut down and on what grounds, the value thereof, and to whom sold, and the moneys received on account thereof, or which without wilful default might have been received.

As to the rental of the estates at the time of the decease of the plaintiffs' mother; what increase has been made in the rents, and the times when, and the yearly amount of the rentals of the estates.

4th. Set forth also in manner aforesaid a full true and particular rental of all and every the said estates of the plaintiffs, &c. in the several counties aforesaid as the same stood at the time of the death of the said J. B. their mother, specifying therein the names of all and every the tenants and the yearly rents of each of the said estates at that time; And also set forth all and every increase or advance of all and every or any of the rents of the said estates from time to time made, with the particular times or periods when and from which such increase or advance took place, so as to show what was the yearly amount of the rentals of the said estates in every year when any advancement or increase took place from the death of the said J. B. to this time, save and except such increase or advance as may have been made by the plaintiffs in the rents of such of the said estates as were delivered into their hands since their possession thereof.

As to the woods and woodlands, and the names and number of acres thereof.

5th. Set forth in manner aforesaid a full true and particular account of all the woods and wood-lands parcel of the said estates, with the names and quantities or number of acres thereof respectively, and the places where the same are situate; and also a full true and particular account of all such lands and tenements parcel of the said estates as at any time or times were not let to any tenant or tenants, or were in hand or occupied by the said late defendant R. B. or any other person or persons by his order or on his account, with the

Also as to the estates which were from

names and quantities or number of acres and yearly value thereof \*respectively, and when and how long from time to time the same were so unlet to any tenants or tenants or were in hand or occupied by the said late defendant R. B.; And set forth also in manner aforesaid the names of the several manors belonging to the said estates, and in what particular counties the same are situate, with the natures and extents of such manors respectively, and a full true and particular account of all quit rents and of all fines heriots and other uncertain profits belonging or arising from each of such manors respectively, with the yearly amounts thereof.

6th. Set forth in manner aforesaid the name or names and place or places of abode of the steward or several stewards employed by the said late defendant R. B. from time to time in the collection of the rents and management of the said estates and each of them respectively, from the time of the death of the said J. B. down to the time when possession of any of the said estates was taken by the plaintiffs, and down to the time of his own death as to such of the said estates as he continued in possession of to that time.

7th. Set forth in manner aforesaid a true and particular schedule of the accounts of all and every the stewards and agents of the said estates respectively from the time of the death of the said J. B. down to the time when the possession of any of the said estates was delivered into the possession of the plaintiffs, and down to this time as to such of them as the said late defendant continued in possession or until his death and which are now in your possession; and also a true and particular schedule of all the surveys field-books maps plans counter-parts of leases rentals particular books and papers of accounts minutes entries agreements and memorandums kept by all or any of the said stewards or agents of or concerning the said estates or any of them or the rents profits or management thereof, and whether any such have at any time or times to your knowledge information or belief been torn burnt or destroyed and when and by whom; or whether you have ever seen or heard of any such which are or is not now forthcoming, and what is become thereof according to the best of your knowledge information and belief.

8th. Set forth also in manner aforesaid a full and particular schedule and description of all and every or any books or book of account memorandums agreements declarations of trust letters minutes entries or other papers at any time or times kept by the said late defendant R. B. of or concerning his receipts payments or transactions for or upon account of the plaintiffs Viscountess S. &c. or all or any of their estates, or the plaintiffs Lord S., &c. or in any wise concerning the said estates or any of them; and whether to your knowledge information or belief any such books or book of account memorandums minutes declarations of trust letters entries or papers have at any time been torn burnt or destroyed, or whether you have ever seen or heard of any such which are or is not now forthcoming, and if so, what is become thereof according to the best of your knowledge information and belief.

9th. Set forth in manner aforesaid a full true and particular account of all and every the manors messuages lands tenements and

time to time on hand or occupied by the deceased defendant.

[ \*771 ]  
Also as to the names of the manors belonging to the estates and the descriptions thereof, and of the quit rents, fines, &c. belonging thereto.

As to the names of the stewards employed by the deceased defendant in the collection of the rents and management of the estates. Schedule required of the accounts of the stewards and agents of the estates; Also of all surveys, maps, rentals, &c. kept by them; and whether any have been destroyed and how.

Schedule and description required of all accounts declarations of trust, letters, &c. kept by the deceased defendant of his receipts payments, or transactions for or on account of the plaintiff's estates, and whether any have been destroyed and how.

An account

required of all the manors, [ \*772 ] &c. comprised in certain deeds, and a rental of such as remain unsold.

Schedules required of all deeds, &c. relating to the estates in question.

As to whether the examinant admits assets of the deceased defendant sufficient to answer what may appear to have come to his hands.

hereditaments which are comprised in the indentures of, &c. in the pleadings mentioned, and in the indenture of, &c. in the pleadings \*also mentioned, and in each and every of them; And also set forth a full true and particular account and rental of all such of the said manors, &c. as now remain unsold, specifying therein the names of all and every the tenants or tenant or occupiers, and the names and quantities or number of acres of the fields and lands occupied by each tenant.

10th. Set forth in manner aforesaid a true and particular schedule of all title-deeds and writings and other deeds instruments evidences and writings relating to the said estates of the said Viscountess S. &c. in the several counties aforesaid or to any of them now in your custody or power, or which at any time or times have been in your custody or power or in the custody or power of the said late defendant R. B., and if any of the deeds and evidences relating to the said estates or any of them were at any time or times in the custody or power of the said late defendant R. B. or in your custody or power and are not now in your custody or power, set forth in whose custody or power the same now are or what is become thereof as you know have heard or for any and what reason believe.

11th. Do you not admit assets of the said late defendant R. B. sufficient to answer what on taking the aforesaid accounts shall appear to have come to the hands of the said late defendant? If not, Then set forth in manner aforesaid a full true and particular account of all and every the sums and sum of money securities for money arrears of rent goods chattels personal estates and effects whatsoever of or belonging to the said late defendant R. B. at the time of his death, with the kinds qualities natures true and real values thereof respectively, and also set forth a full true and particular account of all such parts thereof as have been possessed and received by or which have come to the hands of you the said now defendant R. B. as his executor, with the times when and how and from whom you have possessed or received the same, and what part or parts thereof, if any, now remain outstanding.

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*Interrogatories for the examination of executors before the Master.*

Between L. M. . . . Plaintiff,  
and  
E. C. and others, Defendants.

Interrogatories exhibited on behalf of the plaintiff, before J. S. esq. one of the Masters of this honorable court to whom this cause stands referred, for the examination of the defendants M. C. and A. C. pursuant to the decree made on the hearing of this cause, bearing date the — day of —.

As to certain \* 1st. Whether or not was T. C. deceased the testator in the



pleadings of this cause named at the time of his death possessed of \*entitled to or interested in any books pictures china household goods and household furniture and live or dead stock or any and which of such particulars? If yea, Set forth a full true and particular inventory or schedule of such several articles, and the descriptions and true and utmost value of all such articles and effects at the time of the death of the said testator, and how and by what means do you ascertain the value thereof, or hath the value thereof been ascertained by any and what persons or person and whom by name, and whether or not are such several articles or any and which of them now in your or either of your possession or power, or what hath become of the same, and have or hath or not you or either and which of you sold or otherwise and how disposed of the same or any and which of them? Have you or hath either and which of you or have any person or persons and who by name by your or either of your order or for your or either of your use possessed or received all or any and which of such several articles, or any and what sum or sums of money from the sale and disposition thereof and of any and which of them? If yea, Set forth a full true and particular account of all such sum and sums of money, and of the times when the same were received, and of the purposes to which the same have been applied, and of the amount or balance due from you and each of you in respect thereof; Set forth the several matters inquired after by this interrogatory, and all the particulars relating thereto, fully and at large according, &c.

\* 2d. Whether or no was the said testator T. C. at the time of his death possessed of entitled to or interested in any and what goods chattels personal estate and effects other than and besides the several articles inquired after by the preceding interrogatory? If yea, Set forth a full true and particular account of all such personal estate and effects distinguishing the several particulars thereof; And whether or not have or hath you or either of you or any and what persons or person by your or either of your order or for your or either of your use possessed or received all or any and what part of such last-mentioned personal estate and effects of the said testator T. C., or any and what moneys produced from the sale and disposition thereof or of any and what part or parts thereof? If yea, Set forth a full true and particular account of all such personal estate and effects and of all and every the sum or sums of money so possessed and received from the sale and disposition thereof, distinguishing the several particulars thereof, together with the names of the persons or person by whom the same and every part thereof were or was possessed and received, and what parts of such personal estate and effects now remain in your or either and which of your hands or power, and what is the amount or balance due from you and each of you in respect of the moneys so possessed or received, and all other particulars relating thereto fully and at large? And whether or not is any part of the said testator's personal estate and effects now outstanding, and if so, in whose hands or power? Declare, &c.

\* 3d. Have or hath you or either of you or any and what person or persons by your or either of your order or for your or either of

particulars of the testator's [ \*773 ] personal estate, an inventory or schedule thereof required to be set forth; Also as to the value of all such particulars and whether any of them have been sold, what moneys have been received therefrom and how the same have been applied, and what balance remains due from the examiners.

As to any other personal property to which the testator was entitled, and how the same has been disposed of.

As to any moneys laid out

by the exami-  
nants in pay-

[ \*774 ]

ment of the  
testator's  
debts, funeral  
and testamen-  
tary expensess.

As to what  
debts remain  
unpaid.

your use paid laid out expended or allowed any sum or sums of money \*in or towards payment and satisfaction of the said testator's debts funeral and testamentary expenses or otherwise on account of the said testator's personal estate? If yea, Set forth a full true and particular account of all such sum and sums of money so paid laid out or expended, together with the times when and the names of the persons by and to whom and for what the same and every part thereof have or hath been so paid laid out expended or allowed, and all the particulars relating thereto fully and at large according to the best and utmost of your knowledge remembrance information and belief.

\* 4th. Have all the debts due and owing by the said testator T. C. at the time of his decease and his funeral expenses been paid and satisfied, or do any and which of such debts now remain due and owing? And if so, To whom and to what amount and on what security or securities? Declare, &c.

As to the par-  
ticulars of the  
testator's in-  
terest in lease-  
hold premises,  
and in whose  
occupation  
the same have  
been since his  
death, and at  
what rent.

Was or not the said testator P. C. at his death possessed of or in some manner interested in a messuage or tenement at H. in the county of M.? If yea, Set forth the particulars of which the same consisted, and from whom and under what lease or agreement and for what term and at and by what yearly or other rent the same and every part thereof was holden by the said testator, and set forth also at what rent and other conditions and for what term of years you have since taken the same, and in whose occupation the same and every part thereof hath been since the death of the said testator and now is, and at what rent or rents.

As to what  
property spe-  
cifically be-  
queathed has  
been possess-  
ed by the ex-  
aminants be-  
sides such as  
has been de-  
livered over.

Whether or no have you or either and which of you since the death of the said testator possessed any and what property of the said testator which was specifically bequeathed by him, other than and except such moiety as you have delivered to the specific legatees? If yea, Set forth a full true and particular inventory and account thereof and of every part thereof, and all the particulars whereof the same consisted, and the quantities qualities full real and true values of the said particulars respectively.

As to what an-  
nuityants un-  
der a will are  
living and  
who have died  
since the tes-  
tator's death,  
what sums  
have been  
paid in dis-  
charge of  
their annui-  
ties, and what  
funds have  
been set apart

Whether or no are any and which of the annuityants in the said testator's will named living, and have any and which of the said annuityants died since the death of the said testator, and when in particular, and hath or have any and what sum or sums of money been paid in discharge of any and which of their said annuities, and in particular in discharge of the annuities given for the charitable purposes in the said will mentioned, and when and by whom, and have any and what fund or funds been set apart and in whose name or names and in what manner to answer the same annuities or any and which of them? Set forth, &c.

to answer the same.

*\*Interrogatories for the further examination of executors, defendants, pursuant to a decree.*

Between S. H. and others, infants, by J. F.  
their next friend, . Complainants,  
and  
J. S. H. an infant, J. G., S. G., and  
W. B., . . . Defendants,

Interrogatories exhibited on the behalf of the defendant J. S. H. for the further examination of the defendants J. G. and S. G. pursuant to the decree made on the hearing of this cause bearing date the — day of —, before J. S. esq. one of the Masters of this court to whom the said cause stands referred.

\* 1st. Have any and what money securities for money book and other debts goods chattels estate and effects belonging to the personal estate of J. H. deceased, the testator in the pleadings of this cause named at the time of his decease, or which have since accrued arisen or become due on account of his business carried on by you by virtue of his will or otherwise been received by you or either and which of you, or come to your or either and which of your hands custody possession or power, or to the hands custody possession or power of any other person or persons by your or either of your order, or for your or either of your use since the time of and other than and besides what is set forth in your last examination put in before the said Master? Set forth a full and particular account of all and singular such money securities for money book and other debts goods chattels estate and effects, and when and by whom and from whom and on what particular account the same and each and every part thereof were or was received.

As to moneys and effects received on account of the business carried on by the examiners by virtue of the will since the former examination.

\* 2d. Have you or either and which of you paid any and what sum or sums of money, or been at any and what expense or expenses in and about your executorship or in and about the management and conduct of the business of the said testator J. S. H. either by yourselves or by any person or persons appointed or authorized by you to manage and conduct the same business since your former examination put in before the said Master in this cause, other than and besides what are set forth in your former examination? Set forth the particulars of all such payments and expenses, and when and by whom and to whom paid and on what account; Were the same and every of them just debts and necessary expenses? Declare according to the best of your and each of your several and respective knowledge and belief.

As to the expenses incurred in the executorship or the management of the testator's business since the former examination.

\* 3d. Are there any parts of the goods chattels moneys securities for money debts estates or effects either specific or pecuniary of or belonging to the estate of the said testator J. H. deceased at the

As to any outstanding personal estate, debts and

effects particularly as to certain specific articles.

[ \*776 ]

time of his death or which have accrued or become due since his \*death, now outstanding unreceived or now remaining in your hands undisposed of and unaccounted for, and particularly a five guinea piece, a silver pencil-case, sundry medals and small pieces of silver coin and other things? Have any and what means or endeavors been used by you or either and which of you or by your order to collect or get in such outstanding debts and effects, and when and in what manner? Have any or either and which of the persons owing such debts or sums of money to the said testator's estate, declined or refused to pay the same and for what reasons? Declare the truth of the several matters inquired after by this interrogatory, according to the best of your knowledge remembrance and belief.

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*Interrogatories for the examination of witnesses  
before the Master as to a testator's real estates,  
and the title-deeds belonging thereto.*

Between T. H. and S. his wife, Complainants,  
and  
H. J. and others, . . . Defendants.

Interrogatories exhibited on behalf of  
the said complainants, before A. P. esq.  
one, &c. [*the usual title*] for the examina-  
tion of witnesses.

1. As to the real estates to which the testator was entitled, and his interest in a particular estate.

1st. Whether or no as you for any and what reason know or believe was A. B. the testator in the pleadings of this cause named at the time of his death seized of or otherwise and how entitled to or in any and what manner interested in any and what freehold and copyhold estates, and in particular had he any and what interest in a certain estate called P. in the parish of K. in the county of M.? Set forth a full true and just description and particular of all and every the freehold or copyhold estates which the said testator was seized of or entitled to or interested in at the time of his death, and where the same and every part thereof is situate, and in whose tenure or occupation the same and every part thereof then was or since has been and now is respectively; Set forth, &c.

2. As to the title-deeds relating thereto;

2d. Have you or had you at any time and when last in your custody or power any deeds or deed instruments or instrument papers or paper-writings or writing belonging or in any manner relating to any and what freehold or copyhold estate which the said testator was seized of or entitled to or interested in at the time of his death, and in particular relating to the said estate called P., or to a certain messuage lands and premises situate in the parish of B. in the said county of M. called L. in the occupation of D. H. or to another messuage lands and premises in the said parish of B. called T. P. in the occupation of the said D. H., or to another messuage lands and premises called C. P. situate in the parish of M. in the said

county in the occupation of J. J.? Set forth a list or schedule of all and every such deeds or deed instruments or instrument papers or paper writings or writing, and set forth what has become \*of such thereof as were but are not now in your custody or power, and set forth also whether any person or persons and who in particular as you know or for any and what reason believe has or have now or has or have at any time and when had in his her or their custody or power any and what deeds or deed instruments or instrument papers or paper-writings or writing belonging or in any manner relating to the said freehold and copyhold estates of the said testator, or any and what part thereof.

Schedule thereof required to be set forth.

[ \*777 ]

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*As to what the property of a Lunatic consists, also as to the rents received and the application thereof, the repairs done to the estates, and what land-tax has been redeemed.*

1st. Of what did the property of the said lunatic consist at the death of his father and of what doth it now consist, and what part of it did then and doth now consist of personal property? And set forth a full true and just rental and particular of the real estate to which the lunatic became entitled at the death of his father, and the nature quantities and qualities thereof, and where the same and every part thereof is situate, and the yearly value of each particular thereof, and in whose tenure and occupation the same and every part thereof was at the death of the father of the said lunatic and since has been and now is, and under what yearly or other rent or rents and for what term or terms of years, and whether at full rack-rent or how otherwise.

2d. Have not you or some person or persons and who by your order or to your use since the death of the father of the said lunatic been in possession or receipt of the rents and profits of the real estates to which the said lunatic became entitled at the death of his father or of some and what part thereof? If yea, Set forth a full true and particular account of all and every sum and sums of money which hath and have been received by you or by any person or persons by your order or to your use for or in respect of the rents and profits of the said estates or any part thereof which have become due since the death of the father of the said lunatic, and when and by whom and from whom and for what rent and of what part of the said estates and when due all and every such sums were respectively received; And set forth also a full true and particular account of the manner in which such rents and profits have been applied or disposed of by you in each year, particularly distinguishing how much thereof hath in each year been applied for the maintenance and provision of the lunatic and how much thereof for repairs and other outgoings.

3d. Were the repairs which have been so done to the said estates done by you by the advice of any surveyor or builder and whom, and were the same necessary and such as the tenants of the

[ \*778 ]

said several premises had a right to require from their landlord? If so, why? And was the father of the said lunatic at the same average expenses for repairs in his life-time as you have incurred since his \*death? And if not why? And whether or no is it a prudent course of management to let the said estates upon such terms that the tenants have a right to require such repairs, and might not the same have been let on repairing leases or otherwise upon terms more advantageous to the landlord? And would you have let the said estates upon such terms and have done the said repairs thereto if the said estates had been your own property? And have you not redeemed the land tax on some and what part of the said estates, and for what reason?

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*Interrogatories for the examination of mortgagees in possession.*

Between, &c.

Interrogatories exhibited, &c. [*Before the Master.*]

As to what is due for principal and interest.

1st. Whether or no is or are there any and what sum or sums of money due and owing to you or any or either and which of you for principal or interest on the mortgaged premises in the pleadings in this cause mentioned? If yea, Set forth how much is due for principal and how much for interest and the particulars thereof respectively, and how you make out or compute the same? Set forth, &c.

How long the examnants have been in receipt of the rents and profits of the premises, and what has been received on account thereof.

2d. Have you or either and which of you or any other person or persons and who by your or either and which of your order or for your or either and which of your use been for any time and how long in possession or receipt of the rents and profits of the said mortgaged premises or of any and what part thereof? If yea, Set forth a full true and just rental and particular thereof and where the same and every part thereof is situate and the yearly value of each particular thereof, and in whose tenure and occupation the same and every part is and hath been during the time of such possession and under what yearly or other rent or rents? And set forth also a full true and particular account of all and every sum and sums of money which hath and have been received, or but for your or some or one and which of your wilful default or neglect might have been received by you or some or one and which of you or by any other person or persons and whom by your or some or one and which of your order or for your or some or one and which of your use, for or in respect of the rents and profits of the said mortgaged premises or any part thereof, and when and by whom and from whom and for what rent and of what part of the said mortgaged premises and when due all and every such sums were respectively received or might have been received? Set forth, &c.

*\*Interrogatories for the examination of a mortgagee of an estate in the West Indies.*

Between W. D. Q. and J. G., . . . Plaintiffs,  
and  
W. B., W. A., J. J., G. B., and  
W. L., . . . Defendants.

Interrogatories exhibited by the plaintiffs  
and the defendants J. J. and W. L.  
before Sir W. W. bart. one, &c.

1st. Is there or not any sum of money due and owing to you for principal or interest on the mortgages in the pleadings in this cause mentioned and in the decree in this cause particularly specified? If yea, Set forth how much is due to you for principal and how much for interest and the particulars thereof respectively, and how you make out or compute the same; Set forth the matters in this interrogatory inquired after according to the best of your knowledge remembrance information and belief; distinguish whether you set forth the same from your own knowledge or from any and what written book document or account, or from the information of any other person or persons, and if from the information of any other person or persons set forth the name or names of such person or persons and the time when you received such information; and if according to your belief only, set forth how and from whom in what manner and when you received the information on which you form your belief and all the grounds and reasons for such your belief, fully and at large.

As to the amount of the principal and interest due on the securities.

2d. Have you laid out or expended any sum or sums of money in necessary repairs or lasting improvements upon the estates and premises in the island of J. comprised in the indentures of mortgage in the decree in this cause particularly mentioned? If yea, Set forth what sum or sums of money you so laid out or expended, and for what repairs or lasting improvements, and when where by whom and to whom particularly such sum or sums of money and every of them respectively was or were paid laid out or expended; And set forth and distinguish how much of such sum and sums of money hath been laid out or expended in necessary repairs, and how much in lasting improvements; Set forth the matters in this interrogatory inquired of you according to the best of your knowledge remembrance information and belief; distinguish whether you set forth the same from your own knowledge or, &c. [*Conclude as in the 1st Interrogatory.*]

As to what moneys have been laid out in necessary repairs or lasting improvements.

3d. Set forth a full true and particular account of the rents produce and profits of the estates and premises comprised in the mortgages in the decree in this cause mentioned received by you or by any other person or persons by your order or for your use, or \*which without your wilful default might have been received thereout, and when where and at what times respectively and by whom and from

As to what rents have been or without his wilful default might have  
[ \*780 ]

been received  
by the exami-  
nant.

whom respectively such rents produce and profits and every part thereof have and hath and might have been received, and why and for what reason or reasons any and what part and parts of such rents produce and profits have or hath not been received; Set forth the matters in this interrogatory inquired of you according to the best and utmost of your knowledge remembrance information and belief; distinguish whether, &c. [*Conclude as in the 1st Interrogatory.*]

As to the  
estates taken  
possession of  
by the exami-  
nant under a  
writ of assist-  
ance, and the  
rents received  
therefrom.

4th. Whether or no did you or any person for your use or on your account under color of the writ of assistance in the decree in this cause mentioned, enter upon and take possession of any estates and premises the property of or belonging to the plaintiffs or those under whom they claim which were not comprised in the said several mortgages in the said decree mentioned or any or either of them? If yea, Set forth what estate or estates or premises you or any person for your use or on your account so took possession, and the nature quantity and quality thereof and the particulars thereof and of every part thereof; And also set forth a full true and particular account of the rents produce issues and profits of the said estates and premises in this interrogatory inquired after received by you or by any other person or persons by your order or for your use, or which without your wilful default might have been received thereout; and distinguish the same from the rents and profits of the estates and premises comprised in the said several mortgages, and set forth when and at what time and times particularly and by whom such rents produce issues and profits as by this interrogatory are inquired after have or hath been or might have been received and why and for what reason or reasons any and what parts or part of such rents produce issues and profits have or hath not been received; Set forth the matters, &c.; Distinguish, &c.

As to what  
sums have  
been laid out  
in lasting im-  
provements  
on the estates  
last mention-  
ed.

5th. Have you expended any sum or sums of money in lasting improvements upon the estates and premises in the preceding interrogatory inquired after, being the estates and premises not comprised in the mortgages in the decree in this cause mentioned? If yea, Set forth what sum or sums of money you so expended and for what lasting improvements, and when where by whom and to whom particularly such sum or sums of money and every of them respectively was or were paid laid out or expended; Set forth the matters, &c.; Distinguish, &c.

To prove at  
what times the  
agents of his  
own estates  
transmitted  
their accounts  
of the produce  
of the estates  
in question;  
at what times  
such accounts  
were examin-  
ed and set-  
tled;

6th. Has it not been the constant and invariable usage for your agents or managers of your estates in the West Indies to transmit accounts every year or at any and what other stated or uncertain periods of all the sugars rum and other produce arising from the estates in the pleadings in this cause mentioned and how the same have been disposed of? Were not such books annually or at some and what other stated or uncertain periods examined and the accounts therein contained signed or allowed by you as settled accounts or by some and what person or persons duly or in some and what manner authorized by you to settle and sign such accounts or to act on your behalf? Do not such accounts contain an account of all the produce arising from the estate in the pleadings mentioned, and how the



same from time to time have been disposed of for the whole of the time since the same were taken possession of under the writ of assistance to the present time or for any and what part of such time; and if not for the whole of such period, Set forth from what time the accounts of the produce of the estates in question in this cause have been omitted to be included in the accounts returned to you or your agents in England of the produce of your other estates in the West Indies, and why and for what reason the same were so omitted? Have all and each and every of such signed accounts been produced and left with the Master to whom this cause stands referred, and if not why? Answer fully and distinctly the several matters inquired after by this interrogatory; And distinguish, &c.

7th. Set forth a true and accurate account of the names of the managers of the estates in the pleadings mentioned in the West Indies and of the consignee or consignees of the produce thereof in England from the time the same were taken possession of as aforesaid to the present time, and from what time and up to what time each and every of such persons were manager or managers or consignee or consignees; Set forth the particulars inquired after by this interrogatory according to the best of your knowledge information and belief.

8th. What number of negroes or slaves was there on the estates in the pleadings in this cause mentioned at the time you took possession thereof under the writ of assistance in the said pleadings mentioned? Set forth a list or schedule thereof with the names of each and every of such negroes or slaves and of the issue and increase thereof existing at the time or since produced after you had so taken possession of the said estates; Were or were not some and which of such negroes or slaves removed at some and what time or times off and from the said estates to some and what other estates belonging to you in Jamaica or to some and what other place or places? If yea, Which of such slaves were so removed? Set forth the particulars and names of such slaves which were so removed and of the issue and increase thereof and when they were respectively so removed and what became of them, and how they and each and every of them and their issue and increase were disposed of; Were any and which of such negroes or of the issue and increase thereof sold and when and to whom and for what price or prices? Set forth, &c.

whether the same contain an account of all the produce of the estates in question, and of the application thereof since the examination took possession; And whether such accounts have been left with the Master.

As to the names of the managers of the estates in question.

As to the number of negroes or slaves on the estates in question at the time the examinant took possession under the writ of assistance and of the issue and increase thereof, and whether any have been removed to any other estates and how disposed of, whether any were sold and at what prices.

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*Interrogatories for the examination of a mortgagee of a West India estate.*

1st. Whether or no on the sale of the plantation and estate by you to H. G. for which the said sum of —l. was the consideration or purchase-money, was the crop then on the said plantation or estate or any and what part thereof comprised in the said sale and in the said purchase-money of —l.? If yea, whether or no have or has any persons or person and who applied or converted any and what part

To prove that the crop on the plantation at the time the examinant sold the estate was comprised therewith

in the sale, and that the same has been converted to his own use.

[ \*782 ]

As to whether the examinant has cleared the estate from all duties charged thereon on the sale thereof, and from all other incumbrances.

To prove whether the examinant held any other securities besides the testator's bond and the mortgage of the plantation. To prove what security mortgagee resorted to for payment of his money, and whether if he had used due diligence the payment thereof could not have been enforced on his other securities besides the bond.

of the crop so sold to your use and when and to what amount as you for any and what reason know or believe?

\*2d. Whether or no have you in pursuance of the agreement or articles of sale between you and the said H. G. made the said plantation and other premises comprised in such agreement or articles free and clear of and from all estates rights royal and other duties, particularly the duties if any payable to the King of Denmark in respect of the said plantation and premises on the sale and transfer thereof or otherwise howsoever, and of and from all other duties claims and incumbrances? Do the said plantation and other premises or any and which of them now remain subject or liable to any and what duties claims or incumbrances contrary to the effect of the said agreement?

3d. Whether or no had you any security or securities for the payment of the said principal sum of —l. and the interest thereon or any part thereof other than the said bond of the said testator T. B. and the covenant of the said H. G. and the mortgage or security of the said plantation or estate? If yea, Set forth the particulars of all and every such securities and the value and amount thereof and what is now due thereon and from whom respectively.

4th. Whether or no have you in any and what manner and when resorted for payment of any and what part of the said sum of —l. and the interest thereof or of any and what part thereof to any and what other security other than the said bond of the said testator T. B., and if not, why? And whether if you had used due and reasonable diligence could not the payment of some and what part of the said principal sum of —l. or some and what part of the interest thereof have been in some and what manner enforced from some and which other of your securities other than the said bond?

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*Interrogatories relating to partnership matters.*

Between, &c.

Interrogatories to be, &c.

As to partnership moneys received.

1st. Set forth a full true and particular account of all and every the sum and sums of money received by you or by any person or persons by the order or for the use of you and G. B. deceased in the pleadings mentioned or either of you on account of the copartnership trade carried on by the said G. B. and the said R. B., and after the decease of the said G. B. by you the said R. B., as in the pleadings mentioned, and when and from whom and to whom and by whom and on what account the same have been received and paid; Declare the truth, &c.

As to what moneys have been drawn out by the examinant for

2d. Have you or not at any and what time or times since the — day of — drawn any sum or sums of money out of the trade which was so carried on by you and the said G. B. and afterwards by you alone for any other purpose than for the purposes of such trade? If

yea, Set forth a full true and particular account of all and every such sum and sums of money and when the same were drawn out by you respectively; And have you or not placed out or applied any \*and which of such sums of money at interest or in the purchase of government or other and what stocks and funds or in any and what other manner so as to make any profit or advantage thereby? If yea, Set forth how and in what manner and in what stocks funds or how otherwise you have applied each and every of such sums and sum of money, and all and every the sum and sums of money which you have received as the interest or dividends thereof or otherwise on account or by means thereof; Declare, &c.

any other than partnership purposes, and in what securities any part thereof has been invested.

[ \*783 ]

3d. Set forth a full true and particular account of the stock in trade outstanding debts and other property and effects which belong to the said trade or business which was carried on by you and the said G. B. as in the pleadings mentioned and which hath since been carried on by you, and all the particulars whereof the same consisted, and the natures kinds quantities qualities full true and utmost value thereof; and in case the same or any of them are not now in your possession or power, set forth in whose possession or power the same are; and set forth an account of the debts which are justly due and owing on account of such concerned and to whom and for what the same are due and owing; Declare, &c.

As to the particulars of the partnership stock in trade and effects, and what debts are due on the partnership account.

4th. Set forth a full true and particular account of the gains and profits which have been made since the — day of — in the said trade or business which was so carried on by you and the said G. B. and afterwards by you alone, and by means of the moneys which you have received on account thereof, and how and in what manner you compute the same; Declare, &c.

As to the gains and profits made during and since the partnership.

1st. Whether or no were you acquainted with C. H. late of — but now deceased, and for how long did you know him before his death, and when and about what time did he die? Whether or no did the said — at any time and when take — as a partner with him in any and what business? If yea, What were the terms of such partnership, and what proportion or share was the said — to have therein, and for how long did such partnership continue, and when and for what reason was the same determined or dissolved and upon what terms, and whether or no have you at any time or times respectively heard the said — make any and what declaration or declarations respecting the said copartnership or the terms or conditions thereof or the commencement or dissolution thereof? Set forth, &c.

To prove the existence of a partnership and the terms thereof, how long it continued, and upon what terms it was dissolved, and as to any declarations made relative thereto.

2d. Whether or no were you at Christmas — and for how long before in any and what manner employed by the late — in the carrying on of his paving business? Whether or no did the said — at Christmas — or at any other time and when take any partner and whom in his said business, and for how long did such partnership continue, and in what name or names were the bills made out from that time to the persons for whom such business was done; And whether or no were you at any time and when after Christmas

To prove the admission of a person into partnership, and in what names bills and receipts were afterwards made out.

— employed and by whom and by whose directions in the making out or delivering of such bills or in the receipt of moneys for the same, and in whose name or names were receipts for such moneys given? Set forth, &c.

[ \*784 ]

To prove whether after a particular period a person continued to carry on or interfered in the business, and by whom it was carried on, and how bills and receipts were made out; also to prove a valuation made of the stock of carts, horses, &c. employed in the business and under what agreement.

To prove who were employed during particular years in paving certain streets, and to whom the profits were to belong, and as to any declarations made relative thereto.

To prove a partnership entered into in several trades, the shares of the parties interested, by whom the capital was provided, and the agreements made relative thereto, and as to the partnership moneys; by whom stock was provided at the commencement of the partnership; an account required of the partnership stock and the value thereof.

3d. Whether or no did the said — in any and what manner and when and for how long time after Christmas — continue to carry on the paving business in which he had been concerned or in any and what manner to interfere therein or in any part thereof, or by whom was the said paving business and every part thereof and particularly the business of the government boards done and performed from Christmas — until the death of the said —, and in whose name or names were the bills made out from that time to the persons for whom such business was done? And whether or no were you at any time and when after Christmas — employed and by whom and by whose directions in the making out or delivering of such bills or in the receipts of moneys for the same, and in whose name or names were receipts for such moneys given? And whether or no in or about Christmas — or at any other time and when were the stock of carts horses barges and other property employed in the said paving business or any part thereof valued by any person or persons and whom? And if yea, Upon what occasion did such valuation take place and under what agreement and at what prices? Declare, &c.

4th. Whether or no were — and the said — or either and which of them in or about the years — or — employed in the paving of — and any other and what street or places in the city of L.? If yea, To whom were the profits of such particular paving business to belong as you for any and what reason know or believe, and did you at any time or times and when hear the said — make any and what declaration or declarations respecting the same? Declare, &c.

5th. Whether or no did you the defendant I. C. and R. C. now deceased or either and which of you at any time or times and when respectively enter into copartnership with the bankrupt T. C. in the pleadings of this cause respectively named, in the several trades or businesses of — or in any and which of such trades or businesses? And if yea, In what shares and proportions were you the said I. C. and the said R. C. and the said bankrupt respectively interested in such trades and every of them, and what was the capital employed in such trades or businesses or every of them and by whom was the same provided, and what were the conditions and agreements between you in each and every of such trades with respect to the providing of capital and the bringing into and taking out moneys from the said trades; and to whom did the buildings stock and utensils in each and every such trade belong at the commencement thereof, or by whom were the same provided, and what was then agreed between you with respect thereto? And set forth the particulars of all such buildings stock and utensils and the full true and utmost value thereof and of every part thereof, and what hath since become thereof? Declare, &c.

at the commencement of the partnership; an account required of the partnership value thereof.

*\*Interrogatories as to the sale of a ship, the moneys received for freight, and the sums expended for seamen's wages and the ship's disbursements.*

Between H. D. . . . Plaintiff,  
and

G. B. . . . Defendant.

Interrogatories exhibited on behalf, &c.  
[usual title before a master.]

1st. Whether or no is the ship called the Sir E. H. in the pleadings of this cause mentioned sold? If yea, When and where and by whom and to whom and at what price was the same so sold; and have you or hath or have any other person or persons and who by your order or to your use or by the order or to the use of any other person or persons and whom at any time or times and when respectively received the said purchase-money or any and what part thereof, or for what reason doth the same or any and what part thereof now remain unreceived and what hath become thereof, and if the said ship be not sold for what reason does the same remain unsold?

As to the sale of the ship, and the moneys produced thereby.

2d. Whether or no have you or hath or have any other person or persons and who by your order or to your use received any sum or sums of money for the freight of the said ship? If yea, Set forth a full true and particular account of all and every such sum and sums of money which hath or have been received by you or any other person or persons by your order or to your use for the freight of the said ship, and when respectively and for what and from whom and by whom all and every such sums were so received and set forth also whether any and what sum or sums of money now remain due and owing in respect of the freight of the said ship, and from whom and for what all and every such sums are due and owing, and why the same respectively are unreceived?

As to the moneys received for the freight of the ship.

3d. Whether or no have you paid any sums or sum of money for the seamen's wages and other charges in respect of the said ship forming a prior lien to the demand of the said complainant, or for any bills drawn by the captain of the said ship from the island of C. for the ship's disbursements? If yea, Set forth a full true and particular account of all and every the sum and sums of money which hath or have been so paid by you and when and to whom and for what all and every such sums were respectively paid and disbursed; Set forth, &c.

As to the sums paid for seamen's wages, and the ship's disbursements.

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*An interrogatory for the examination of a person pro interesse suo.*

Have you any and what estate right or interest in or to the premises in the pleadings of this cause mentioned situate in —, or

[ \*786 ] the rents and profits thereof, or in any and what part or share parts or shares \*thereof? If yea, Set forth the nature and extent of such your estate right or interest, and how and in what manner you make out or derive the same?

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SECT. IV.

FORMS OF INTERROGATORIES FOR THE CROSS-EXAMINATION OF WITNESSES.(1)

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In Chancery.

Interrogatories to be administered for the cross-examination of witnesses to be produced sworn and examined on the part of the plaintiffs in a certain cause now depending and at issue in the High Court of Chancery, wherein the Most Noble Charles Duke of D. and J. S. are complainants, and E. C. spinster is defendant, on the part and behalf of the said defendant.

As to witness having acted as auctioneer, and prepared the particulars of sale;

[ \*787 ] \* 1st. Did you act as the auctioneer of and put up to sale by public auction the premises in the pleadings in this cause mentioned? If yea, Did you prepare or cause to be prepared the printed particulars of sale by which the said premises were sold, and by whom and by whose direction were such printed particulars of sale prepared and by whose direction and upon whose account and for whom did you prepare or cause the same to be prepared? Did \*you not or did not your assistants or some other agent of the said complainants and who by name inform the company present at

(1) An adverse party may cross-examine a witness to the same point to which he has been examined in chief, but not to any new matter; *Dean and Chapter of Ely v. Sir Simeon Stewart*, 2 Atk. 44.

A party who examines a witness is bound to keep him in town for forty-eight hours after his production at the seat of the adverse clerk in court; and if cross-interrogatories are left with the examiner within the forty-eight hours, the party must keep the witness in town till his cross-examination is finished. Where a witness left London before the forty-eight hours were expired, the party producing him was ordered to bring him back at his own expense, or the examination in chief to be suppressed; *Whittrick v. Lysaght*, 1 Sim. & Stu. 446, 8. See the 25th of the New Orders in Chancery, *postea*.

If a witness refuse to be cross-examined it is a cause of exception to his testimony, and the court on motion will suppress his deposition *ex parte*; *Wyatt's Prac. Reg.* 419; where a witness who had been examined on the part of the plaintiff secreted himself before he could be cross-examined, the plaintiff was ordered to procure him to attend to be cross-examined within a fortnight, or in default, his deposition on the plaintiff's part to be suppressed; *Flowerday v. Collet*, 1 Dick. 289.

Cross-examining a witness is no waiver in equity of an objection on the ground of interest to the competency of such witness: *Moorhouse v. De Passou*, Coop. 300; *S. C.* 19 Ves. 433; and see note (1) to *Stokes v. M'Kerral*, 3 Bro. Ch. Ca. by Belt, p. 228; *Vaughan v. Worrall*, 3 Swanst. 395.

the time of the sale of the said premises or represent to them that the said premises were let on lease as stated in the said particulars of sale, and did you in any and what manner explain to them such statement contained in the said particulars of sale? Did you not produce and exhibit to the said company present at the time of the said sale a lease or some paper-writing purporting to be a lease of the said premises, and was or not the same produced and shown to the said company by you or by your assistants or some other agent of the said complainants and whom by name, as the lease or copy of the lease of the said premises referred to in lot 2 of the said particulars of sale? Did you not or did not your assistants or some other agent of the said complainants and who by name read or state from the said paper-writing or alleged or pretended lease to the said company present at the time of the said sale, the terms and conditions under which the said premises in the pleadings of this cause mentioned to be comprised in lot 2 of the said particulars of sale were so stated by you or such other person or persons to be on lease? Did you not or did not your assistants or some other agent of the said complainants and who by name at the time of the said sale comment upon the covenants and conditions contained in such pretended or alleged lease, and represent the same as being highly advantageous to a purchaser and more beneficial to a landlord than what are usually introduced into leases in general, and particularly did you not or did not such person or persons represent or state to the said company at the time of the said sale, that the tenant of the said premises was bound to keep the same in repair, and was not entitled to timber from off the same premises for that purpose, or to that or the like or some other and what effect? Declare, &c.

As to representations made by him or the plaintiff's agents at the sale, that the premises were let on lease, and as to his having produced an instrument purporting to be the lease or a copy of the lease referred to in the particulars of sale and also as to comments made by him on the covenants therein contained.

\* 2d. Did not Mr. A. the solicitor for the said defendant apply to you for a copy or abstract of the alleged lease under which the premises described as lot 2 in the pleadings in this cause mentioned were stated to have been let, and when or at what time was such application made? Did you not at the time of such application inform the said Mr. A. for the first time that no such lease had been then granted, and had any such lease in fact been then granted? Declare, &c.

As to application being made by witness by the defendant's solicitor for a copy of the alleged lease, and whether the same had in fact been granted.

\* 3d. Did you not and when deliver to the said Mr. A. as the solicitor for the said defendant a draft or copy of a draft lease purporting to be the same as was produced by the auctioneer or agent on behalf of the said complainants at the time of the said sale, or what did you represent the same to be at the time, and what passed between you and the said Mr. A. relative to such draft lease? Did not the said Mr. A. return such draft lease to you with some and what observations thereon, and did you not afterwards and when return the same to him with several and what alterations made therein? Declare, &c.

As to witness having delivered to the defendant's solicitor a draft lease purporting to be the same as was produced at the sale, what passed relative thereto, and as to the alterations

\*\* 4th. Did not the intended lessee of the said premises make some and what objections to the said proposed draft lease, and did

[ \*788 ]  
which were

made by witness therein.

As to the objections made by the intended lessee to the proposed draft lease, and the negotiations which took place in consequence thereof, and in what respect the lease when executed differed from the draft when first delivered.

As to the date and time of execution of the lease and when notice thereof was given to the defendant's solicitor. The

not considerable negotiations take place between you and the said intended lessee before the terms of the said proposed draft lease were agreed upon and settled with him? Did not the indenture of lease which was ultimately executed by the said intended lessee contain several and what clauses different and in what respect from the said draft lease when first delivered to the said Mr. A., and also different and in what respect from such draft lease when last delivered to the said Mr. A.? Declare, &c.

\* 5th. What is the date of the said indenture of lease? When and at what time was the said indenture of lease of the said premises and the counterpart thereof executed by the lessor and the lessee thereof respectively? And when or at what time did you give or cause notice thereof to be given to the said Mr. A. or to his copartners as the solicitor for the said defendant or to either and which of them, and deliver or cause to be delivered to him or them a copy of such lease? Declare, &c.

\* 6th. Do you know any other matter or thing not inquired after by these interrogatories which may tend to the benefit or advantage of the said defendant in this cause? If yea, Set forth the same fully and at large as if you had been thereto particularly interrogated.

concluding general interrogatory.

As to the knowledge of a steward or land agent of the value and nature of coal mines, in what capacity he was employed by the deceased owner thereof, and as to his occupation in life previously thereto.

\* Was the said L. N. capable at the time when the said agreement was made of forming an accurate judgment or competent opinion of the value of the coal mines or beds of coals under the lands and grounds in the said memorandum of agreement and release comprised; And had he as you do for any and what reason know and believe any and what knowledge of and practice in such matters or in any matters relating to coal mines, and had he ever and when been employed in any coal mines or in or about concerns or business of that description, or was he in any respect acquainted therewith, and had he in any and what manner been in any way obtaining knowledge and information of the nature and value of coal mines, and in what capacity or character was he employed by the said Sir T. B. deceased, and especially at the time when the said memorandum of agreement and release were respectively made and thenceforth to the time of his decease, and what had been his business or occupation previously to his being so employed by the said Sir T. B.? Declare the truth and your utmost knowledge remembrance and belief herein.

Whether a deed was read over to the grantor previously to his executing the same, and whether he was aware of the terms

\* Upon what occasion of and prior to the execution of the said release by the said Sir T. B. was the same read over by or to him, and by whom by name was the same read over to him? Was the said Sir T. B. as you do for any and what reason know or believe aware of the terms and conditions of the said release, and in particular of the number of acres of coal thereby conveyed and the mode of payment for the same and that the same might be gotten as quickly as possible, and that the payment for the same would

[ \*789 ]

\*not be completed for 276 years or for any and what number of years,



and that according to the terms of the said release he would be a trespasser if he entered the pits of the said company to ascertain that the iron stone and upper bed of coal were not damaged or carried away, and that the coals then under the lands then occupied by the before-named S. F., &c. or any and which of them were therein comprised? Set forth the several matters inquired after by this interrogatory fully and at large according to the best and utmost of your knowledge remembrance information and belief, together with the means of knowing and reasons for believing the same, and the truth declare, &c.

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\* If the said Sir T. B. had been aware of all or any and which of the circumstances in the last preceding interrogatory mentioned or that the said upper bed was intended to be included so as to destroy and lock up the iron-stone, would he as you do and for any and what reason know or believe have executed the same? And did he not execute the same in confidence that the said release had been prepared with a view to the fair and equal benefit of both parties, and in ignorance that such terms and conditions as in the preceding interrogatory mentioned were contained therein, and if not, why not? And had not the said Sir T. B. a high opinion of the said J. H. and J. J. or of one and which of them, and did he either read over the whole of the said release or any and what part thereof himself or give directions that any other person should do so for him before he executed the same? And if yea, Whom did he direct to read over the whole of the said release or any and what part thereof, and to whom and in whose presence were such directions given? Set forth, &c. [*Conclude as in the preceding interrogatory.*]

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\* What was the age of L. N. at the time when the memorandum of agreement in the pleadings in this cause mentioned was made, and what was the state of his bodily health and mental faculties at the time; had he not been twice or how often stricken with palsy previously thereto, and was he not thereby to a great or to some and what extent or from some and what other cause inefficient or incapacitated to transact business requiring knowledge and skill, or requiring the exercise of mental faculties to transact the same, and in particular was not the said L. N. unfit and unequal to treat for the sale of the said coal mines and for making proper stipulations and provisions for carrying such treaty into effect? Declare the truth and your utmost knowledge remembrance information and belief herein.

\* Were you not acquainted with the hand-writing of the said L. N. for a long and for some and what period of time in particular before the two letters dated respectively the 31st day of October 1789 and the 18th day of December in the same year, marked respectively with the letters (C) (D) and which have been produced and shown to you were written or do bear date, and is not the manner or character of hand-written of the same respectively a different

thereof or the effect thereof, and the mode of payment of the consideration-money.

As to a party having executed a deed without its having been examined by him or on his part and in confidence that it had been fairly prepared.

As to the age and state of mental faculties of a steward or land agent, and whether from attacks of palsy he was not incapacitated or unequal to enter into a contract relating to coal mines with a view to securing the interest of his employer.

As to the character of the hand-writing of certain letters (written

by a steward or land agent,) and whether the same was not more feeble than at an earlier period, and whether he was not then in fact in a feeble state of health.

\*character and manner from that wherein the said L. N. wrote at some and what earlier period during the time you have known his hand-writing, and in particular is not such character or manner of hand-writing much more unsteady and indistinct and more scrawling and so far as you can judge more feeble than the character or manner of the said L. N's hand-writing at some and what earlier period in particular of your acquaintance with him, and do you not know or believe and for some and what reason that the said L. N. was in a feeble state of health at the time when the said two letters do respectively bear date? Declare the truth of the matters aforesaid, together with your utmost knowledge and belief herein and your reasons for the same.

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Interrogatories to be administered for the cross-examination of witnesses to be produced sworn and examined on the part of the plaintiff in a certain cause now depending and at issue in the High Court of Chancery wherein M. H. is complainant and J. H. and E. his wife, E. R. and H. L. and J. H. an infant are defendants, on the part and behalf of the said defendant J. H.

As to the due execution of a will.

\* 1st. Are you a subscribing witness to the pretended or alleged last will and testament of J. H. deceased in the pleadings of this cause named, and which has been exhibited to you on your examination on the behalf of the said plaintiff? If yea, Did the said J. H. sign the said pretended or alleged last will and testament and publish the same as his last will and testament in your presence and in the presence of the other subscribing witnesses thereto or either and which of them as you know, and were you all present together with him when he signed and published the same as his last will and testament or how else? And did you and the other subscribing witnesses to the said pretended or alleged will respectively or either and which of them sign or set your or their name or names as subscribing witnesses to the signing and publishing thereof by the said J. H. in the presence of the said J. H. or how else and did not you or the subscribing witnesses to the said pretended or alleged will or one and which of them attest and subscribe the same when the said J. H. was not present? And on what day and what time of the day and when was the said pretended will signed and published by the said J. H. and attested by you and the other subscribing witnesses, and how came you to be an attesting witness to the said pretended or alleged will, and by whom were you requested to be present at the signing and publishing thereof and to attest the same? And was there or not some other and what last will and testament of the said J. H. at the time when he signed and published the said pretended or alleged will? And if yea, What has become thereof? Declare, &c.

[ \*791 ]

\* 2d. Are you a subscribing witness to the alleged writing or me-

morandum at the bottom of the pretended or alleged last will and testament of J. H. deceased in the pleadings of this cause named and which has been exhibited to you on your examination on behalf of the said plaintiff, and alleged to be a re-execution and republication thereof by the said J. H. deceased? If yea, Did the said J. H. sign the said pretended or alleged writing or memorandum in your presence and in the presence of the other subscribing witnesses thereto or either and which of them as you know, and were you all present together with him when he signed and published the same as a re-execution and republication of his last will and testament or how else? And did you and the other subscribing witnesses to the said pretended or alleged writing or memorandum respectively or either and which of them sign or set your or their name or names as subscribing witnesses to the signing and publishing thereof by the said J. H. in the presence of the said J. H. or how else? And did not you or the other subscribing witnesses to the said pretended or alleged writing or memorandum or one and which of them attest and subscribe the same when the said J. H. was not present? And on what day and at what time of the day and when was the said pretended or alleged writing or memorandum signed and published by the said J. H. and attested by you and the other subscribing witnesses, and how came you to be an attesting witness to the said pretended or alleged writing or memorandum, and by whom were you requested to be present at the signing and publishing thereof and to attest the same? And was there or not some other and what last will and testament of the said J. H. at the time when he signed and published the said pretended or alleged writing or memorandum? And if yea, What is become thereof? Declare, &c.

As to the republication of the will.

\* 3d. How do you know and what particular reason have you to believe that the said J. H. was of sound and disposing mind memory and understanding at the time when he signed and published the said pretended or alleged will or writing or memorandum? And was he or not or might he or not for anything you know or have any reason to believe to the contrary be at the time of unsound and undisposable mind memory and understanding and incapable of making a will, and how did you consider him to be in that respect? And in what state of health of body and of what age was he at the time? And what opportunity had you to judge of his sanity or insanity or of his capacity or incapacity to make a will or conduct his worldly affairs? And did or not you or the other attesting witnesses respectively or any or which of them converse with him at or before or after the time when you say he signed and published the said pretended or alleged will or writing or memorandum? And if yea, Was his conversation sensible and indicative of his capacity to make a will and manage his concerns or how else? And had you or not any acquaintance or intimacy with him for any and what length of time before or after he as you say signed and published the said pretended or alleged will or writing or memorandum? And was he or not in some and what manner as you know or believe and why influenced and prevailed upon and by whom to make the said pretended or alleged will or to

As to the sanity and mental capacity of the testator.

\*sign or publish the said alleged writing or memorandum? And was he or not under great mental imbecility from his age and infirmities? Declare, &c.

The concluding general interrogatory.

\* 4th. Do you know any other matter or thing not inquired after by these interrogatories which may tend to impeach the validity of the said pretended or alleged will or writing or memorandum to the benefit of the said defendant J. H. in this cause? If yea, Set the same forth.

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*Title of interrogatories for the cross-examination of a party examined pro interesse suo.*

Between W. A., . . . Plaintiff,  
and  
H. S. &c. &c. . Defendants.

Interrogatories exhibited before W. W. P. one of the Masters of the High Court of Chancery for the cross-examination of the above named defendant W. O. pursuant to an order made in this cause bearing date the — day of —, whereby it was ordered that the said defendant W. O. be at liberty to go before Mr. P. one of the Masters of the said court, and be examined *pro interesse suo*.

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*Interrogatories to the competency of witnesses, exhibited to them on their cross-examination.(2)*

As to witness being interested in the event of the suit, and whether he is not

\* Are you not interested in all or some and which of the matters in issue between the parties or some and which of them in this suit and shall you not and in some and what manner lose or gain by the event thereof, and especially are you not the defendant in an action of trespass or in some and what action at law wherein the

(2) If a witness is interested and is known to be so previously to his examination, a general interrogatory should be framed requiring him on his cross-examination to answer whether or no he is interested; and if he untruly denies that he is interested the party affected by his evidence may discredit the witness by examining other witnesses as to the truth of that proposition; 2 Madd. Ch. Pr. 422; (there may be however a general interrogatory to every witness whether he has any interest, *Purcell v. Macnamara*, 8 Ves. 325, 2d edit.) If however a party has omitted to examine a witness as to his interest in the suit, he may, before publication move on affidavit for leave to re-examine the witness as to the fact of interest; see *Vaughan v. Worrall*, 2 Madd. Rep. 322, 328; which case was affirmed on appeal, 2 Madd. Ch. Pr. p. 422, note (1).

If a man is examined as a witness and is at his examination disinterested, but afterwards becomes interested and either plaintiff or defendant in the cause, his depositions may be read; *Gross v. Tracey*, 1 P. Wms. 288; *Glynn v. The Bank of England*, 2 Ves. sen. 42; *Cope v. Parry*, 2 Jac. & W. 438, 9.

\*defendants in this cause or some and which of them are plaintiffs, and wherein is or was at issue or depending either mediately or immediately the right and title of the complainants and defendants in this cause or of some and which of them to the same beds or strata of coal, the right and title whereto is litigated and in issue in this cause, or to some and which of the same beds or strata, or to some or what other beds or strata of coal, and has not a verdict been found in the aforesaid action at law in favor of the plaintiffs therein, and is not execution stayed therein by the order and injunction of the High Court of Chancery obtained in this cause upon the application of the complainants or of some and which of them therein? Declare the truth of the several matters aforesaid, together with your utmost knowledge and belief herein.

defendant in an action of trespass in which the title to the lands in question is depending, whether a verdict was not found for the plaintiffs at law, and whether execution is not stayed by injunction.

\* Have you not lately and since this suit was instituted, and at what time in particular, become a co-partner together with the before named several complainants or some and which of them in the establishment or concern called or known by the name or style of the "L—— M—— Company" and in the pleadings mentioned, and have you not thereby or by some and what other means acquired, and have you not now and do you not and for what reason claim to have a beneficial interest or some and what interest in the beds or strata of coal the right and title whereto is litigated in issue between the complainants and defendants or some and which of them in and by this suit, or a beneficial or some and what interest in some and which of the said beds or strata of coal or in some and what parts thereof, or in some and which of the several matters whereto this suit has relation? Declare the truth of the several matters aforesaid, together with your utmost knowledge and belief herein.

As to whether witness has not become co-partner with the plaintiffs in the concern carried on by them, and whether he does not claim a beneficial interest in the lands the title whereto is in issue between the parties.

\* Shall you not be in some manner a gainer or be otherwise affected in case the will of the said J. H. should be established and carried into execution? If so, set forth how and in what manner or in what respect you are likely to be a gainer or affected thereby; Declare, &c.

As to whether witness has not an interest in the establishment of the will in question.

*Interrogatories for the examination of a witness on the voir dire as to his being interested.*(3)

[For a form of title, vide antea, No. 8, p. 687.]

\* 1st. Have you any and what interest in the performance or non-performance of the agreement in the pleadings of this cause mentioned? And if yea, Set forth the nature of such your interest and how the same arises; Declare, &c.

To ascertain what interest witness has in the performance of the

(3) See *Stokes v McKerral*, 3 Bro. Ch. Ca. 228; S. C. cited by the Vice-Chancellor in *Vaughan v. Worrall*, 2 Madd. Rep. 328.

agreement in question.  
As to his interest in the event of the suit.

As to any obligation he may be under to pay or secure the defendant's costs.

**\*\* 2d.** Have you any and what interest in the determination or decision of this cause, or can you by any and what means gain or lose by the event of the said suit? Declare, &c.

**\* 3d.** Are you under any and what honorary or legal obligations and to whom to pay or secure or to see paid or secured the costs or any part of the costs of the said defendant which she has or may incur in this suit or be liable by decree or otherwise to pay? Declare, &c.

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*Articles to discredit witnesses.(4)*

Articles exhibited by A. B. complainant in a certain cause now depending and at issue in the High Court of Chancery wherein the said A. B. is complainant and C. D. defendant, to discredit the testimony of E. F., G. H., and J. K. three witnesses examined before L. H. esq. one of the examiners of the said court on the part and behalf of the said defendant.(5)

1st. The said A. B. doth charge and allege that the said E. F. hath since his examination in the said cause owned and acknowledged that he is to receive or be paid and also that he doth expect a considerable reward gratuity recompense or allowance from the said defendant in case the said defendant recovers in the said cause or the said cause be determined in his favor, and that the said E. F. is to gain or lose by the event of the said cause.

2d. The said A. B. doth charge and allege that the said G. H. and J. K. are persons of bad morals and of evil fame and character, and that they are generally reputed and esteemed so to be, and that the said G. H. and J. K. are persons who have no regard to the nature or

(4) A party is at liberty to examine a witness by general interrogatories as to the credit of the witness, and in contradiction of such facts sworn to by the witness as are not material to what is in issue in the cause; *Purcell v. Macnamara*, 8 Ves. 327, 2d edit., and the cases referred to in note (31), *ibid*.

Examinations to the credit of witnesses can only be by order upon special application with notice, whether before or after publication; but though it is a special motion, it is not necessary in all cases that it should be accompanied by affidavits, see *Watmore v. Dickinson*, 1 Ves. & B. 267, and note (b), 2 Madd. Ch. Pr. 423. If evidence as to the credit of a witness is taken upon the examination in chief it may be suppressed as impertinent; *Mill v. Mill*, 12 Ves. 409; 2 Madd. Ch. Pr. 423, 4. There is no precise time within which the examination as to credit is to take place; *Piggott v. Croxhall*, 1 Sim. & Sta. 467; in which case the plaintiffs were allowed to examine by general interrogatories (in support of articles) as to the credit of the witnesses, and also as to the fact of their having previously to their examination made declarations contrary to their depositions, the Court being of opinion that the fact of such declarations was not material to the issue in the cause.

Forms of titles of interrogatories to discredit the testimony of witnesses will be found in pages 687, 8, *antea*.

(5) See 2 Newl. Ch. Pr. 317.

\*consequences of an oath, and that they are persons whose testimony is not to be credited or believed.

*The title must be varied if the depositions are taken by commission; As thus;*

Articles exhibited by A. B. complainant in a certain cause depending and at issue in the High Court of Chancery wherein the said A. B. is complainant and C. D. defendant, to discredit the testimony of E. F. and G. H. two witnesses examined by virtue of a commission issued out of the said court to J. K. and others directed for the examination of witnesses in the said cause upon certain interrogatories exhibited before them for that purpose, and which said witnesses were examined in the said cause on the part and behalf of the said defendant.

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## \*CHAPTER XVI.

[ \*796 ]

### FORMS OF ORDERS.(1)

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#### I. *Order to amend an Answer.*

Forasmuch, &c. that the defendant since putting in his answer to the plaintiff's bill hath discovered that in the title to his said answer he hath made a mistake in the christian name of the plaintiff by calling him — instead of —, It is therefore prayed that the defendant be at liberty to take his said answer off the file and amend the same in the title thereof by naming the plaintiff — instead of —, which is ordered accordingly, and that after such amendment the defendant do re-swear the said answer.

(1) As by the practice of the Registers two days elapse before an order is delivered out by the Register after it has been made, the solicitor should, whenever it is an object to save that time, as where an order has been made to dissolve an injunction *nisi*, or to confirm a report *nisi*, draw up the order himself on the same day on which it is obtained, and carry it to the Register's office to be passed and entered immediately. So also where an order for the transfer of stock has been made, two days may be saved by the solicitor drawing out the Register's certificate (without which the Accountant General refuses to act), and carrying it to the Register to be signed; the following is a common form of such certificate:

To the Accountant-General of }  
the Court of Chancery. }

Morris v. Johnson.

Pursuant to an order made in this cause, bearing date the — day of —, —l. (in words at length) bank three pounds per cent. annuities, being one-third part of the sum of —l. like three pounds per cent. annuities standing in your name in trust in this cause, are to be transferred unto the defendant Samuel Johnson.

II. *Order that bonds of submission to arbitration be made an order of court.*

Whereas the plaintiff and defendant have severally entered into bonds, &c. [*reciting the bonds*] which said bonds were duly executed as by the affidavit of — a subscribing witness thereto now produced and read appears, It is on the motion of — ordered that the said bonds of submission entered into as aforesaid be made an order of this court, and that the said parties do submit to and be finally concluded by the award which the said arbitrators shall make pursuant to the said commission according to the statute in that case made and provided.

[ \*797 ] \*III. *Order directing that an agreement be made an order of court.*

Whereas by articles of agreement bearing date, &c. it is recited and agreed as follows; (that is to say,) [*setting forth the instrument verbatim*]; Now upon motion, &c. and upon producing one part of the said articles under the respective hands and seals of —, and praying that the same may be made an order of this court, It is ordered that the said agreement be made an order of this court, to be observed and performed by the parties thereto according to the tenor and true meaning thereof, Mr. — of counsel for — consenting thereto.

\*IV. *Order for payment of the plaintiff's costs, part to the executors of his deceased solicitor, and other part to his present solicitor; the deceased solicitor before his death obtained an order for taxation, but died before the same was completed.*

Vice Chancellor.

Wednesday the — day of —, in the 6th year, &c. 1825.

Between J. S. on behalf of himself and all other  
the creditors of B. R. deceased, Plaintiffs.  
and  
J. R., M. D. and others, Defendants.

Recital of petition,  
stating an order made on  
further directions, directing  
a reference to the Master  
to tax the

Whereas A. C. and C. R. and C. C. did on the 26th day of July 1825 prefer their petition unto the Right Honorable the Lord High Chancellor of Great Britain, setting forth that by the order made on the hearing of this cause on further directions and bearing date the 1st day of August 1823, it was amongst other things referred to the Master to tax the parties' costs subsequent to the last taxation thereof, and what should be taxed for such subsequent costs of the



plaintiff should be paid by the Accountant-General of this court to Mr. T. O. or his solicitor; That before the completion of the said suit and taxation of costs the said Mr. T. O. died, having duly made his will and thereby appointed the petitioners A. C. and C. R. executors thereof, who have since duly proved the same in the Prerogative Court of Canterbury; and the petitioner C. C. since his death has acted as the solicitor of the said plaintiff, and prosecuted the said suit to a close; That the said taxation of \*costs has lately been completed, and the costs of the said plaintiff amount to the sum of 245*l.* as appears by the said Master's report, and that such part thereof as had accrued in the said T. O.'s life-time and belong to his estate is the sum of 183*l.* which the first-named two petitioners are entitled to receive and be paid as such executors as aforesaid, and the residue thereof amounting to the sum of 62*l.* the petitioner C. C. is entitled to receive and be paid as the said plaintiff's present solicitor in the said cause, but the said Accountant-General cannot pay the same to the petitioners without the order of this court; And therefore praying that instead of the direction in the said order dated the 1st day of August 1823 to pay out of the sums therein mentioned what should be taxed for the plaintiff's subsequent cost to Mr. T. O. his solicitor, the said Accountant-General might be directed to pay to the petitioners A. C. and C. R. or one of them as such executors as aforesaid the sum of 183*l.* part of the said plaintiff's said subsequent costs, and also to pay to the petitioner C. C. the said plaintiff's present solicitor the sum of 62*l.* the residue thereof; Whereupon all parties concerned were ordered to attend his Lordship on the matter of the said petition, and counsel for the said petitioners this day attending accordingly, upon hearing the said petition, the said order dated the first day of August 1823, the Master's report dated, &c. the probate of the will of the said T. O. dated, &c. read, and what was alleged by the counsel for the petitioners; **THIS COURT DOETH ORDER** that instead of the direction in the order made in this cause bearing date the 1st day of August 1823 to pay out of the sums therein mentioned what the Master should tax for the plaintiff's subsequent costs of this suit thereby directed to be paid to Mr. T. O. the plaintiff's then solicitor, and which costs have since been taxed by the said Master at the sum of 245*l.*, the sum of 183*l.* part of the plaintiff's said subsequent costs be paid to the said petitioners A. C. and C. R. or one of them as such executors as aforesaid, and that the sum of 62*l.* the residue thereof be paid to Mr. C. C. the plaintiff's present solicitor; And for the purposes aforesaid the said Accountant-General is to draw on the bank according to the form prescribed by the act of parliament and the general rules and orders of this court in that case made and provided.

plaintiff's subsequent costs, and payment thereof to his solicitor.

Death of the solicitor before the taxa-

[ \*798 ]

tion, having made a will and appointed two of the petitioners his executors who proved the will, and that the other petitioner has since acted as the plaintiff's solicitor, and brought the suit to a close; Statement of the amount of the costs taxed, and apportionment thereof between the petitioners; and praying that instead of the direction in the former order, the Accountant-General might be directed to pay 183*l.* to the executors of the deceased solicitor, and 62*l.* to the present solicitor.

V. *Order for a sheriff's officer to attend with a suitor whom he had arrested on his returning from Court.*

Whereas Mr. L. as counsel for R. A. B. this day moved the Right Honorable the Lord High Chancellor of Great Britain that the said R. A. B. who on the — day of — was arrested by J. L. the officer for the sheriff of Middlesex in an action at the suit of S. H. gent. might be discharged out of the custody of the said sheriff for that the said R. A. B. at the time of such arrest was returning home from this court after his attendance as plaintiff on \*a motion made in a cause depending therein wherein he was plaintiff and H. and others were defendants, or that the said J. L. might bring the said Mr. B. into this court, Whereupon and upon hearing an affidavit of the said R. A. B. read, HIS LORDSHIP DOETH ORDER that the sheriff for the county of M. do attend with the said R. A. B. in this court to-morrow on the sitting thereof.

[ \*799 ]

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VI. *Order for the discharge of a suitor who had been arrested on leaving the court.*

Complaint being on this day made to the Right Honorable the Master of the Rolls by Mr. — as counsel for the plaintiff in this cause that on yesterday the — the plaintiff E. H. on leaving this court when this cause was partly heard was arrested, and the said plaintiff E. H. being present in court in custody of W. J. A. one of the officers of the sheriff of Middlesex who arrested her, and the said plaintiff being sworn and examined and deposing that she is one of the plaintiffs in this cause, and that on her return and before she got home she was arrested by the said W. J. A. by virtue of a warrant from the sheriff of Middlesex at the suit of the defendant D. R. for a debt of —l., and the warrant being produced in court, IT IS THEREUPON ORDERED that the said plaintiff E. H. be forthwith discharged out of custody.

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VII. *Order that the plaintiff may make his election to proceed at law or in equity.*

Forasmuch as this court was this present day informed by Mr. — being of the defendant's counsel that the plaintiff doth prosecute the said defendant both at law and in this court for one and the same matter, whereby the defendant is doubly vexed; IT IS THEREFORE ORDERED that the plaintiff do within eight days after notice to his attorney at law and clerk in court make his election in which court he will proceed and if he shall elect to proceed in this court, then his

proceedings at law are hereby stayed by injunction, but in default of such election by the time aforesaid, or if the plaintiff shall elect to proceed at law, then the plaintiff's bill is from thenceforth to stand absolutely dismissed out of this court with costs to be taxed by Mr. — one of the Masters of this court.

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*\*VIII. Order for the separate examination of femes covert as to the application of a sum of money.* [ \*800 ]

Upon motion of, &c. IT IS ORDERED that the said — the wife of — and — the wife of — do severally attend — or any — of them to be solely and secretly examined by them separate and apart from their said husbands how and in what manner and to what uses they are willing and desirous that — may be paid and applied; and the said — or any — of them who shall take such examinations are to take the same in writing signed by the said — respectively, and to certify the same in writing under their hands and the signing of the said — and such certificates are to be verified by affidavit; and upon the return of such certificates such order shall be made as shall be just.

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*IX. Order that a defendant, a foreigner residing abroad, may answer in his own language, and directing that the answer be translated by a notary public into English.*

Upon motion, &c. that the plaintiff having exhibited his bill into this court against the defendant that lives at — in the kingdom of —, he hath appeared thereto and hath obtained an order for a commission for taking his answer at —, and such commission hath issued accordingly; That the defendant doth not understand the English language, and therefore it was prayed that the defendant may be at liberty to swear his answer in the — language, and that a notary public may be appointed to translate the same into the English language, and that he may be sworn to the true translation thereof, and that such translation may be filed with the defendant's other answer, which is ordered accordingly, but notice hereof is first to be given to the plaintiff's clerk in court.

X. *Order directing that certain exhibits proved on a commission abroad be delivered to a notary public to be translated, and that his translation thereof may be read at the hearing of the cause.*

[ \*801 ] Upon motion, &c. that the plaintiff having examined several witnesses in — in this cause several of the plaintiff's exhibits and proceedings are written in the — language, and therefore it was prayed that such of the said proceedings and exhibits as are written in the — language may be delivered to a notary public in order to translate the said several proceedings and exhibits into the English \*language, that the said — may be sworn to the true translation thereof, and that such translation may be read at the hearing of this cause, which is ordered accordingly, saving all just exceptions.

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XI. *Order appointing an interpreter upon the examination of a foreigner as a witness.*

Upon consideration this day had by the Right Honorable the Master of the Rolls of the humble petition of the plaintiff, stating (amongst other things) that this cause is at issue and that J. L. P. of, &c. is a material witness for the plaintiff, and that the said J. L. P. speaks the French language but does not understand the English language so that the plaintiff cannot have the benefit of his testimony without the assistance of an interpreter; And therefore it was prayed and his honor doth accordingly order that B. B. of, &c. be appointed interpreter to the said J. L. P. on his being examined as a witness in this cause on behalf of the petitioner; And that the said B. B. be sworn truly to interpret the oath to be administered to the said J. L. P. and also the interrogatories on which he shall be examined and his depositions to such interrogatories, and likewise to keep such depositions secret until publication shall duly pass in this cause, of which notice is first to be given to the defendant's clerk in court.

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XII. *Order for an injunction enjoining the defendant to deliver possession to the plaintiff.*

Upon motion, &c. it was alleged that by the order made on the hearing of this cause, it was ordered that the defendant should deliver possession of the estate in question and all deeds and writings in his custody or power relating thereto to the plaintiff; That the defendant who is in possession of the said estate was served with a writ of execution of the said order, and the plaintiff required him to deliver possession which he refused to do as by the affidavit appears;

and an attachment having been made out against the said defendant, It was therefore prayed that an injunction may be awarded against the said defendant to enjoin him to deliver possession of the said estate to the said plaintiff pursuant to the said decree, which upon reading the affidavit is ordered accordingly.

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\*XIII. *To dissolve an injunction nisi.*

[ \*802 ]

Whereas the plaintiff obtained an injunction for stay of the defendant's proceedings at law until the defendant should answer the plaintiff's bill, and this court make other order to the contrary; Now upon motion this day made by Mr. — being of the defendant's counsel, it was alleged that the defendant hath since put in a full and perfect answer to the plaintiff's bill and thereby denied the whole equity thereof, And it was therefore prayed that the said injunction may be dissolved, which is ordered accordingly unless the plaintiff his clerk in court having notice hereof shall on — show unto this court good cause to the contrary.

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XIV. *Order made upon showing cause against dissolving an injunction, exceptions having been taken to the defendant's answer, —reference directed to the Master to certify whether the answer is sufficient or not, provided his report be obtained within a limited time.*

Whereas by an order of the — day of — for the reasons therein contained, it is ordered that the injunction granted in this cause for stay of the defendant's proceedings at law should be dissolved, unless the plaintiff his clerk in court having notice thereof should on this day show unto this court good cause to the contrary; Now upon motion, &c. it was alleged that the defendant having put in an insufficient answer to the plaintiff's bill, the plaintiff hath taken exceptions thereto, since which the defendant hath not put in any further answer although the defendant's is very insufficient as the plaintiff is advised; And therefore it was prayed that the said injunction may be continued until the said defendant hath put in a perfect answer to the plaintiff's bill; Whereupon and upon hearing of what was alleged by the counsel on both sides, IT IS ORDERED that it be referred to Mr. — one, &c. to look into the plaintiff's bill the defendant's said answer and the plaintiff's said exceptions, and certify whether the said answer be sufficient or not; But the plaintiff is to procure the Master's report in — days, or in default thereof the said injunction is to stand dissolved without further motion, which in the mean time is hereby continued.

**\*\*XV.** *Order made on the petition of a purchaser directing a reference to the Master to inquire at what time the vendors (who were trustees for sale) had shown a good title, and when the incumbrancers and all parties interested were ready to join; what expenses had been incurred by the purchaser in getting in the incumbrances, and in the execution of certain instruments, which ought not to have been borne by him, and also what dilapidations have taken place.*

Friday the 5th day of August, &c. 1825.

Between T. Tunstall, esq. and M. I. his wife, &c. . . . . Plaintiffs,

and

F. M. Trappes and E. his wife, &c.

Defendants.

And between the said T. T. esq. and M. I. his wife, &c. . . . . Plaintiffs,

and

M. A. Tasburgh, &c. . . Defendants.

And between B. Rawson, esq. . Plaintiff,  
and

The said M. A. Tasburgh, &c. Defendants.

Whereas the above named B. Rawson did on the 22d day of June last prefer his petition unto the right Honorable the Lord High Chancellor of Great Britain, setting forth that on the — day of — 1821 the petitioner entered into a contract or agreement in writing with the above named defendants in the third mentioned cause whereby, &c. [*This petition is inserted at length antea, p. 525; the recital of it in the order was precisely the same as there stated as far as the statement of the order of the 21st of August in p. 530; by which the time for completing the purchase was enlarged to the 15th day of November; the order proceeded thus:*]

That the said conveyances and assurances were not executed by all parties thereto by the said 15th day of November last, several of them having made various objections and others requiring certain conditions and compensations to be previously given or secured to them; And by another order of his lordship made in the said cause, and also in the other two causes thereinbefore mentioned, upon the application of the defendants to the said thirdly mentioned suit, and bearing date the 13th day of November last, It was ordered by and with the consent and approbation of all parties beneficially interested in the said purchase (being the several parties to the first mentioned cause, or who had already executed the said conveyance) that the said time for completing the same should be further enlarged to the 10th day of January then next, and that upon the execution of the said conveyances releases mortgages and other assurances approved of by the Master by the parties thereto respectively except C. T.

party thereto for whose signature within two years the petitioner thereby agreed to accept the undertaking of J. J. P. and G. P., and the fine levied by F. M. T. and E. his \*wife, and satisfaction of or a sufficient substantial indemnity against the judgments remaining unsatisfied on the rolls, and when the said conveyances releases mortgages and other assurances were so executed, the said fine levied, satisfaction so entered or indemnity given, and possession of the said estates delivered to the petitioner except the portion thereof in the possession of the defendant J. S., and the said conveyances and releases and the title-deeds evidences and writings deposited in the office of Mr. C. the Master to whom these causes stood referred ready for delivery thereof to the petitioner, after payment of the purchase-money, It was ordered that the full amount of the purchase-money, except 1030*l.* and 3000*l.*, being the sum of 48,685*l.*, should be paid by the plaintiff into the bank, in the name and with the privity of the Accountant-General of this court to the credit of the three causes subject to the several charges liens and incumbrances affecting the said estates and to the further order of the court, but without prejudice to the claims of the plaintiff for costs and dilapidations; And it was ordered that 2520*l.* 9*s.* 6*d.* part of the said 48,685*l.* when paid in should be carried over to a separate account in these causes, to be entitled, "The account of the S. estate," upon which W. R. the mortgagee of that estate was to have the first claim for principal interest and costs in respect of such mortgage money and costs; And it was ordered that the mortgage for 1030*l.* should be paid off within one month after the execution thereof, and that upon the execution of proper and sufficient releases such sum of 1030*l.* should be also paid by the petitioner into the bank to the credit of these causes; And it was ordered that the interest of the 3000*l.* remaining on mortgage should be also from time to time during the life of the said F. M. T. paid into the bank to the credit of these causes, and upon payment of the sum of 48,685*l.* as aforesaid by the petitioner, It was ordered that the said title-deeds evidences and writings should be delivered up by the said Master to the plaintiff, and that the possession of the portion of the said estates in possession of the said J. S. should be then delivered by him to the petitioner, and that the purchase-money should not be paid out without notice to all parties in the said order named, and that the petitioner should be let into the receipt of the rents and profits as from the 11th day of October instant, paying interest from the 1st day of November then instant to the day of paying the money into court; That the said conveyances releases and other assurances were not completed and executed or the other matters and things in the said recited order mentioned done and performed by the said 10th day of January, and the time for doing or procuring the same was enlarged to the 10th day of February last, and from thence the same was further enlarged to the 15th day of March last, when another order was made in the said three causes and bearing date the same 15th day of March last, whereby the said time was by and with the like consent as aforesaid still further enlarged to the 20th day of April last; And it was ordered that the provisions in the said order of the 13th day of November last, so

[ \*804 ]

[ \*805 ]

far only as regards the payment by the petitioner into the bank in the name of the Accountant-General of the full amount of the petitioner's purchase-money except the sum of 1030*l.* and 3000*l.*, and \*his being let into the receipt of the rents and profits of the said estates from the 11th day of October last, paying interest from the 1st day of November to the day of paying the money into court should be varied, and instead thereof, It was ordered that the petitioner should on or before the said 20th day of April then next, and when the said conveyances releases mortgages and other assurances were executed, such execution to be certified by the Master, and when the other matters and things directed in the said order to be done before the payment of the purchase-money into court, were done and performed as directed by the said order (the same to be verified by affidavit,) pay into the bank with the privy of the said Accountant-General his said purchase-money with interest to be there placed to the credit of the said three causes as aforesaid, but subject and without prejudice as in the said order mentioned, and that the petitioner should be let into the receipt of the rents and profits of the said estate from the 5th day of April then next; That the said conveyances releases and assurances and other matters and things in the said order mentioned were not completed and done and performed by the said 20th day of April last, but by another order of this court bearing date the 2d day of May, 1825, the said time was finally enlarged to the 9th day of May last, and the said order of the 15th day of March 1825, was also thereby varied and directed to be as follows, viz. That the time for executing and settling all proper and necessary conveyances releases mortgages and assurances of the estate and premises to the petitioner the purchaser, which stood enlarged by the said order of the 13th day of November 1824 to the 10th day of January 1825, and which had been further enlarged to the said 15th day of March last, should be further enlarged to the 9th day of May then instant, and that the provisions of the order dated the 13th day of November 1824 so far only as regards the payment by the petitioner into the bank in the name of the Accountant-General of this court of the full amount of his purchase-money except the sums of 3000*l.* and 1030*l.* in the said order mentioned, and being let into the receipt of the rents and profits of the said estates from the 11th day of November then last, paying interest from the 1st day of November to the day of paying the money into court should be varied, and instead thereof that the petitioner should on or before the 9th day of May instant, and when the said conveyances releases and other assurances (the said mortgages excepted) were executed, and when the said matters and things directed by the said order dated the 13th day of November 1824 to be done before the payment of the purchase-money into court were done and performed as directed by the said order of the 13th day of November last, pay into the bank with the privy of the said Accountant-General to be there placed to the credit of these causes, his purchase-money, except the said sums of 3000*l.* and 1030*l.* as aforesaid, being the sum of 48,685*l.* with interest, but subject and without prejudice as in the said order mentioned, he the petitioner



as to his own execution and the defendants M. A. T., S. T. S., and C. V. the trustees as to the execution by themselves and all other parties (except the plaintiffs in the first and second causes, and \*except the defendants R. W., I. S., and R. O.) undertaking to procure the execution of the mortgages on or before the 26th day of May then next, and of the release of the mortgage for 1030*l.* on or before the 26th day of June then next, the execution of such mortgages and releases as to the excepted parties being undertaken for by them respectively, the said mortgages and releases so far as the same had not already been approved of by or on behalf of the parties to be settled by the said Master in case the parties differ about the same, and that 2520*l.* 9*s.* 6*d.* part of the 48,685*l.* when so paid into the bank shall be so carried over to a separate account in these causes, to be entitled "The account of the S. estate;" upon which W. R. the mortgagee of that estate was to have the first claim for principal interest and costs in respect of such mortgage, and that upon the execution of a proper and sufficient release for the said mortgage of 1030*l.*, the petitioner should pay the said sum of 1030*l.* and the interest thereon into the bank with the privity of the Accountant-General to be there placed to the credit of these causes subject to the further order of this court, and that the petitioner should also pay the interest of the 3000*l.* remaining on mortgage from time to time during the life of the said F. M. T. into the bank with the privity of the said Accountant-General to be there placed to the credit of these causes, the amount to be verified by affidavit, subject to the further order of this court, and that the petitioner should be let into the receipt of the rents and profits of the said estates from the 5th day of April last; That the said defendants to the thirdly mentioned suit having at length completed the said conveyances and done and performed the matters and things in the said several orders required of them, the petitioner on the 7th day of May last paid his said purchase-money, except as aforesaid, into the bank, as by the same orders directed, part whereof has been carried over to the separate account of the said — estate and the whole has since, pursuant to another order of this court, been laid out in the purchase of bank 3*l.* per cent. annuities, in the name of the said Accountant-General, In trust in these causes, subject to the further order of the court; That it was in and by the said purchase contract provided that inasmuch as the said manor land and hereditaments at N. aforesaid were subject to certain family portions not exceeding in the whole 7300*l.* for persons some of whom from legal disabilities might for a time be incompetent to release the said estate, a full and sufficient sum of money for securing the payment of such portions should be set apart from the said purchase-money and be invested by the said defendants and petitioner their respective heirs executors administrators or assigns on government security in the joint names of trustees, two of whom to be named by the said defendants and two by the petitioner, until the payment and release of such portions, and a proper deed or instrument in writing should at the expense of the said defendants the vendors be prepared and executed by such trustees declaring the trusts thereof, which deed

[ \*806 ]

[ \*807 ]

when so executed as aforesaid should be deposited with the petitioners his heirs appointees or assigns, but it was afterwards agreed by all parties and at the request of the defendants in the third \*mentioned cause, that to avoid setting aside so large a part of the said purchase-money as would be required to secure such portions upon government security, the petitioner should retain the two sums of 1030*l.* and 3000*l.* being the only portions which were incapable of being released, and grant mortgages of competent parts of the said estates for securing the payment thereof when the parties entitled thereto should be enabled to release the same, and which mortgages were prepared and approved of by the said Master with the other deeds and instruments, and are the same as are mentioned and referred to in the said recited orders; That immediately after the payment by the plaintiff of his purchase-money and his obtaining his said conveyances, he did according to his undertaking in the last order execute and deliver over such two mortgages, and has also prepared and delivered for execution a release for the said sum of 1030*l.*, and is ready and desirous of paying off the same with the interest accrued thereon immediately the same is executed; That since the date of the said purchase agreement and during the period the title to the said estates and premises had been under investigation, and the subsequent length of time consumed in the settlement of the said conveyances and the said inquiry as to the necessary parties thereto and obtaining the concurrence and execution thereof by such parties, the said estates and premises and the buildings thereon have become greatly dilapidated, and the mortgages and other incumbrancers in possession thereof have suffered the tenants thereof to carry off the produce thereof and otherwise cultivate the same in an unhusbandlike manner contrary to the custom of the country, whereby the land is greatly deteriorated, and the petitioner has lately caused the same to be surveyed and the damage estimated, and the same is found to amount to a very large sum of money, which the plaintiff is advised and submits he is entitled to have paid back to him out of the said purchase-money as an abatement, the same having been expressly paid under the several orders without prejudice to the said petitioner's said claim; That from the circumstances in the said Master's report of the number and amount of the incumbrances and of the various proceedings and negotiations and other matters incident to the situation of the several parties, the conveyances and assurances to the petitioner have been greatly increased in number and length, and the expenses thereof and of the said purchase throughout have been also thereby greatly increased; and the plaintiff submits that he is entitled to be paid all such increase of expenses thereof out of the said purchase-money so paid by him into court as aforesaid, or that the said defendants in the third mentioned cause as vendors, are themselves bound to contribute thereto such portions of the said expenses as have been occasioned by reason of such incumbrances proceedings and negotiations or incident thereto, or as shall exceed the amount the petitioner would have had to bear had the said defendants the said vendors in the first instance procured convey-

ances of the several interests of such incumbrancers to themselves, and then have conveyed to the petitioner by a common conveyance, and to be allowed the same as \*trustees in their accounts, and the petitioner has also at present been at the expense of the said two mortgages and the proceedings relative thereto for securing the parts of the said purchase-money for the said parties stated to be under legal disabilities and as provided by the said purchase agreement, but which it is thereby also provided should be paid by the said defendants in the third mentioned cause as hereinbefore stated; and the plaintiff has also entered into a certain deed of covenant for the production of the title-deeds of the said estates for the purposes of the inquiries in the first mentioned cause, the expenses whereof it has been agreed should be borne by the said defendants; And therefore, Praying that it might be referred back to the said Master to tax the petitioner his costs of the said third mentioned suit, and also his costs of the second mentioned suit, and the costs of the said several orders and applications and other proceedings made and had in the said three suits jointly and in the said thirdly mentioned suit separately. Or if necessary, that it might also be referred to the said Master to inquire and certify to this court whether the said defendants had shown a good title to the said estates and premises, or whether they were able to execute or procure to be executed to the petitioner good and sufficient conveyances releases and assurances of the same free from all incumbrances save as appears by the said contract or agreement for sale previously to the filing of the petition in the said thirdly mentioned cause, or at what period they made out such good title or were able to execute or cause or procure to be executed such conveyances releases and other assurances as aforesaid; And that the said Master might also ascertain and allow to the petitioner the part or proportion of the costs charges and expenses of the said several conveyances releases and other assurances, and of the various proceedings negotiations and other matters and things incurred and paid by him in consequence of or by reason or means of the number of incumbrances on the said estates and of the situation of the said several parties and incident thereto, together also with such costs charges and expenses as petitioner has incurred or may incur in or in relation to the said mortgages granted to secure the said portions as provided by the said purchase contract, and of the releases when paid off, and also of the said deed of covenant entered into by the petitioner as aforesaid and of the production thereunder and incident thereto respectively; And that it might also be referred to the said Master to take an account and valuation of the dilapidations which have taken place on the said estates and premises since the date of the said agreement and of the deterioration and waste committed thereon since the same period and previously to the plaintiff taking possession thereof And that what the said Master shall tax for the plaintiff's said costs of these suits respectively, and what he shall allow for the part or proportion of the said other costs charges and expenses hereinbefore mentioned, and also what he shall certify to be the amount or valuation of the said dilapidations deteriorations and

[ \*808 ]

[ \*809 ]

waste might be paid back to the petitioner out of his said purchase-money so paid into the bank as aforesaid; and that for this purpose the Accountant-General might be directed to sell so much of the sum of 50,870*l.*, 3 per cent. consolidated annuities now standing in \*his name in the books of the bank of England In trust in these causes as will raise sufficient to pay the same; Whereupon all parties concerned were ordered to attend his Lordship on the matter of the said petition; And counsel for the petitioner and for the plaintiffs in the first and second causes, and for the defendants F. M. T., and E. his wife, F. T., &c., &c. &c. this day attending accordingly, no one attending for the other parties although they have been duly served with a copy of the said petition and order thereon as by affidavit now read appears, upon hearing the said petition, the agreement dated, &c. &c. [*referring also to the several orders*] read, and what was alleged by the counsel for the petitioner and for the said parties, HIS LORDSHIP DOTH ORDER that it be referred back to the master Mr. C. to inquire and state to the court at what time the defendants the vendors in the third mentioned cause had shown a good title to the estate and premises, and when the several incumbrancers and other parties joined, and when they were ready to join respectively in the conveyance thereof to the petitioner, the purchaser; And it is ordered that the said Master inquire whether any and what cost charges and expenses have been incurred and sustained by the said petitioner, the purchaser, in and about getting in the several incumbrances on the said estates and the mortgages to secure the portions and the deed of covenants mentioned in the petition and incident thereto which ought not to be borne by the petitioner, the purchaser; And it is ordered that the Master do also inquire and state to the court whether any and what dilapidations have taken place upon the said N. estate between the date of the contract for sale thereof and the petitioner taking possession, and to distinguish at what times such dilapidations have taken place, and the parts of the said estate upon which the same have so taken place; and the said Master is to be at liberty to state special circumstances arising out of any of the said inquiries, and the same are to be without prejudice to the costs thereof respectively; and it is ordered that the rest of the petition do stand over.

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XVI. *Order for the appointment of a receiver with liberty to let the estate with the approbation of the Master. (See No. LXIII. and No. LXIV. of the New Orders in Chancery, postea.)*

Upon opening, &c. IS ORDERED that it be referred to Mr. ——— &c. to appoint a proper person to be receiver of the rents and profits of the real estate of ———, and to allow him a reasonable salary for his care and pains therein, such persons so to be appointed receiver first giving security to be allowed of by the said Master and to be taken before a Master Extraordinary in the country if there shall be occasion, duly and annually to account for and pay what he

shall so receive as this court shall direct, and the tenants of the said estate are to attorn and pay their rents in arrear and growing rents to such receiver, who is to be at liberty to let and set the said estate from time to time with the approbation of the said Master as there shall be occasion.

\*N. B. If the estate be in Ireland say, "and let the person who [ \*810 ]  
"shall be appointed receiver of the rents and profits of the said estate in Ireland give security to be approved of by the said Master; "but the recognizance is to be acknowledged by the person so to be "appointed receiver before a Master of the court of Chancery in "Ireland, and to be duly entered and enrolled according to the "course of that court; and the taking and enrolling thereof is to be "duly certified to this court by one of the Masters of that court."

If there be copyhold estates and courts to be held, add at the end the following words: "and let such courts as have been usually held "and are proper to be held for the copyhold estate, be from time to "time held by the receiver in the name or names of the person or "persons in whom the legal estate is, and let the receiver bring into "this court his account of all such fines and other profits as shall be "taken by him at such courts."

If a manor, insert before the preceding clause "and any other "person or persons in receipt of any part of the profits of the said "manor are also to pay the arrears and growing payments thereof "to such receiver," and conclude thus, "and let such receiver let "or set such part or parts of the land and premises and the quit "rents and other manorial rights and profits of the said manor as "have been usually let or set by copy of court-roll or otherwise according to the custom of the said manor with the approbation of "the Master as there shall be occasion."

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XVII. *Order made upon petition for sale of an estate; with liberty to the petitioners to proceed in a suit in the names of the plaintiffs upon indemnifying them against the costs.*

IT WAS ORDERED on the consent of the parties therein mentioned, that the said estate should be sold before the Master, together or in parts as the said Master should think fit, and all proper parties were to join as the said Master should direct; And in order to the said sale, all deeds and writings in the custody or power of any of the parties relating thereto were to be produced before the said Master upon oath; And it was ordered that the money arising by such sale should be paid by the purchaser or purchasers into the bank in the name and with the privy of the Accountant-General of this court, to be there placed to the credit of the said cause, subject to the further order of this court; And it was further ordered that S. T., &c. the petitioners should be at liberty to proceed in the said suit in the names of the plaintiffs A. S., &c., the petitioners indemnifying them against all costs which might be occasioned thereby.

*\*XIX. That service of a subpoena on the defendant's attorney be deemed good service on the defendant.*

Upon motion, &c. it was alleged that the defendant prosecutes the plaintiff at law and cannot be found to be served with a subpoena, as by affidavit appears, and it was therefore prayed that service of a subpoena to appear to answer the plaintiff's bill upon the defendant's attorney at law be deemed good service on the defendant to compel him to appear to and answer the plaintiff's bill, which upon hearing the said affidavit read is ordered accordingly.

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*\*XX. Order made on an infant's having attained twenty-one, directing an immediate transfer to her of a sum of stock, and payment of the accruing dividends thereon, also payment of a sum of cash in the bank to her solicitor, and further directing upon the execution by her of the conveyances of certain estates to the purchasers thereof, under a decree for sale made during her minority (which decree is set forth in the recital of the petition,) a transfer to be made to her of a sum of stock purchased with the moneys produced by sale of the estates, and payment of the accruing dividends thereon. (The petitioner having married previously to the transfer of the latter sum, and covenanted that the same should be transferred to the trustees of the settlement executed previously to her marriage, it became necessary to obtain another order, which is inserted postea, p. 817.)*

Vice Chancellor.

Wednesday the 8th day of August, &c. 1827.  
Between J. M. and I. his wife, E. L. and M. his  
wife, . . . . . Plaintiffs.  
and  
J. S., J. W. and L. his wife, &c. . Defendants.

Recital of petition;

Stating a will whereby the testator devised a messuage to his mother for life, remainder to his son in fee, charged with the payment of 500*l.*;

Devise of another messuage to his wife

Whereas the above-named defendant L. L. S. did on the 1st day of August instant prefer her petition unto the Right Honorable the Lord High Chancellor of Great Britain, setting forth that W. S. late of, &c. deceased, by his last will and testament bearing date the 8th day of June 1809 duly executed and attested for the validity of devises of real estates, gave and devised unto his mother C. S. the messuage, &c. for and during the term of her natural life, and from and immediately after her decease in case she survived the said testator, which event happened, he gave and devised the same premises unto his son J. S. his heirs and assigns forever, subject nevertheless to and charged with the payment of the sum of 500*l.* which he directed should be considered as part of his personal estate; And the said testator also gave and devised unto his wife M. S. the messuage, &c.

for and during the term of her natural life, and from and after the decease of his said wife, in case she survived the said testator (which she did) he gave and \*devised the said last-mentioned premises unto his said son J. S. his heirs and assigns forever, subject nevertheless to and charged and chargeable with the payment of the sum of 1000*l*. which he directed should be also considered as part of his personal estate, and all the residue of the said testator's personal estate as well as the said several sums before-mentioned to be considered as his personal estate, he gave and bequeathed unto his five daughters equally to be divided between them as particularly mentioned in the said will; That the said testator departed this life on or about the — day of —, leaving his said mother C. S. who departed this life on or about the — day of December —, and the said M. S. who died on or about the — day of January —; That the said I. S. the son of the said testator and to whom he gave and devised the said estates charged as aforesaid after the death of the said C. S. and M. S. also departed this life on the — day of — intestate, leaving the defendant L. W. then L. S. his widow and the petitioner his only daughter and heiress at law him surviving; That the said L. S. afterwards intermarried with the defendant J. W., and they as the bailiffs or guardians of the petitioner entered into the possession of the said estates so devised and charged as aforesaid and into the receipt of the rents and profits thereof; That by an order made in this cause bearing date the 23d day of December 1817, it was referred to Mr. C. then one of the Masters of this court, to take an account of what was due for interest on the said sums of 1000*l*. and 500*l*. so charged on the said estates as aforesaid, and also to take an account of the rents and profits of the several premises so charged with the payment thereof, which had come to the hands of or been received by the said defendants J. W. and L. his wife or by any person or persons by their or either of their order or for their or either of their use; And it was further ordered that the said several premises so respectively charged with the payment of the said sums of 1000*l*. and 500*l*. or so much or such part thereof respectively as the said Master should deem necessary, should be sold with his approbation to the best purchaser or purchasers that could be got for the same to be allowed of by the said Master, wherein all proper parties were to join and concur as the said Master should direct, and in order thereto, All deeds and writings were to be produced, and the petitioner was also to join in such sale when she should attain the age of twenty-one years, unless on being served with a subpœna to show cause against the said order, the petitioner should within six months after attaining that age show good cause to the contrary; And in the mean time it was ordered that the purchaser should hold and enjoy the same against the said defendant the petitioner and her heirs; And it was ordered that the moneys to arise by such sale should be paid into the bank with the privity of the Accountant-General of this court to be there placed to the credit of this cause, "The amount of moneys produced by sale of real estates," subject to the further order of the court; That the said Master by three several reports of sale bearing date respectively the 13th day of

for life, remainder to his son in fee charged with the payment of 1000*l*.;

[ \*812 ]

Bequest of the residuary personal estate and of the two sums of 500*l*. and 1000*l*. to his five daughters equally; Death of the testator leaving his mother and wife surviving, who have since died;

Death of the devisee in fee intestate leaving a widow, and the petitioner his only daughter his heiress at law an infant;

Marriage of the devisee's widow with the defendant J. W., who as guardian of the petitioner entered into possession of the devised estates.

Order made directing a reference to the Master to take an account of what was due for the interest on the sums of 500*l*. and 1000*l*., an account of the rents of the estates charged therewith received by the defendants J. W. and his wife.

Also directing a sale of the estates charged with the

above sums,  
the petitioner  
to join therein

[ \*813 ]

on attaining  
21, unless  
cause shown  
to the contra-  
ry within six  
months after  
attaining 21,  
and the pur-  
chase moneys  
to be paid into  
the bank;

By three re-  
ports of sale  
the Master  
certified that  
the whole of  
the premises  
charged had  
been sold in  
three lots,  
that the defend-  
ant W. F.  
was the pur-  
chaser of lot 1  
at 1000*l*. in-  
cluding the  
value of the  
fixtures;

that J. G. and  
J. S. were the  
purchasers of  
lot 2 at 1320*l*.;  
and that the  
plaintiff J. M.  
was the pur-  
chaser of lot 3  
at 1000*l*. in-  
cluding the  
value of fix-  
tures;

Statement of  
the Master's  
general report  
ascertaining  
the amount  
due for inter-  
est on the two  
sums of 1000*l*.  
and 500*l*.,  
also the a-  
mount of  
rents received  
by and due  
from the de-  
fendants J. W.  
and wife,  
that the  
amount of  
purchase-mo-  
neys had been

October 1818 which were all duly confirmed certified that he had been attended by the solicitors for all parties, and that it appearing to him to be necessary that the whole of the premises so charged \*as aforesaid should be sold, he had therefore provided to sell the same in three lots in manner therein mentioned, and by one of such reports he certified that W. F. of, &c. (one of the defendants) was the best bidder for and the purchaser of the premises comprised in lot 1 at the price or sum of 1000*l*., and that in the conditions it was stipulated that the purchaser should pay for the fixtures in and about the same according to the valuation therein mentioned, which in the particular of sale was stated to have been made at the sum of 15*l*., which said sum of 15*l*. being added to the sum of 1000*l*. they made together the sum of 1015*l*. being the whole purchase-money for lot 1; And by another of such reports he certified that J. G. and J. S., of, &c. were the best bidders for and the purchasers of the premises comprised in lot 2 at the price or sum of 1320*l*.; And by the other of such reports he certified that J. M. of, &c. (one of the plaintiffs) was the best bidder for and the purchaser of the premises comprised in lot 3 at or for the price or sum of 1000*l*., and that in the said conditions it was stipulated that the purchaser of the said lot 3 should pay for all fixtures belonging to the vendors according to the valuation therein also mentioned, which in the particular of sale was stated to have been made at the sum of 5*l*., which being added to the sum of 1000*l*. made 1005*l*. the whole amount of the purchase-money for the said lot 3; That the said Master by his general report under the said order also certified that he had computed interest at 4*l*. per cent. per annum on the said two several sums of 1000*l*. and 500*l*. from the times of the respective deaths of the said C. S. and M. S. to the 27th day of January 1821 the date of that his report; and he found that there was due for interest on the said sum of 1000*l*. the sum of 237*l*. and on the said sum of 500*l*. the sum of 82*l*., making in all the sum of 319*l*.; and he found that there had been received by the said defendants J. W. and L. his wife on account of the rents and profits of the said several premises the several sums set forth in the schedule to this report amounting to 535*l*., but that they had paid expended or disbursed thereout on account of the same premises the several sums also set forth in the schedule to his report amounting to 97*l*. which being deducted from the said 535*l*. there remained a balance of 438*l*. which he found due from the said defendants J. W. and L. his wife on account of such rents and profits; and he further found that the purchase-moneys for all the said lots and amounting altogether to 3391*l*. had been paid into the bank with the privity of the Accountant-General to the credit of this cause, "The amount of moneys produced by sale of real estates," pursuant to the directions of the said order, and that the same had been laid out in the purchase of 4871*l*. bank 3 per cent. annuities in the name of the said Accountant-General in trust in this cause as aforesaid, which together with the sum of 73*l*. cash account due for half a year's dividend thereon then stood in trust to the credit of the said cause as aforesaid; that by another order made in this cause bearing date the 13th day of February 1821, It was ordered



that the said Master's report dated the said 25th day of January 1821 should be confirmed, and that the said defendants J. W. and L. his wife should out of the said sum of 438*l.* certified to be due from \*them and remaining in their hands on account of the rents and profits of the said estates and premises charged with the said sums of 1000*l.* and 500*l.* in the said report mentioned, pay to the plaintiff J. M. in right of I. his wife the sum of 63*l.*, being one-fifth part of the sum of 319*l.* certified to be the interest which had accrued on the said sums of 1000*l.* and 500*l.* from the time of the respective deaths of the said M. S., and C. S., and the like sum of 63*l.*, being one other fifth part thereof to the plaintiff E. L. in right of the plaintiff M. his wife, the like sum of 63*l.*, being one other fifth part thereof to the defendant C. S. the younger, the like sum of 63*l.*, being one other fifth part thereof to the defendant W. F. in right of the defendant M. his wife, and the like sum of 63*l.*, being the remaining one-fifth part thereof to the defendant T. G. in right of the defendant M. his wife; And it was ordered that the said defendants J. W. and L. his wife should pay the sum of 118*l.* the residue of the said sum of 438*l.* after making such several payments thereout as aforesaid into the bank with the privity of the Accountant-General to be there placed to the credit of this cause to an account to be entitled "The defendant L. L. S. her account of dividends and interest;" And it was ordered that it should be referred back to the Master to tax all parties their costs of obtaining the said order of the 28th day of December 1817, and of the said Master's report and of the application for the now stating order, and that so much of the 4876*l.* bank 3 per cent. annuities then standing in the name of the said Accountant-General in trust in this cause, "The amount of moneys produced by sale of real estates," as would be sufficient to raise such costs when taxed, and also the several sums of 1000*l.* and 500*l.* should be sold in the usual manner, and out of the moneys to arise by such sale, It was further ordered that such costs should be paid in manner therein mentioned, and that the sum of 300*l.* should be paid to the plaintiff J. M. in right of the plaintiff I. his wife, being one-fifth part of the said sums of 1000*l.* and 500*l.*, and that the further sum of 300*l.* being one other fifth part thereof, should be paid to the plaintiff E. L. in right of the plaintiff M. his wife, and that the further sum of 300*l.*, being one other fifth part thereof should be paid to the defendant W. F. in right of the defendant M. his wife, and that the further sum of 300*l.*, being one other fifth part thereof should be paid to the defendant C. S. the younger, and that the further sum of 300*l.* being the residue of the said two sums of 1000*l.* and 500*l.* should be carried over to "The account of the defendant M. G. and her children," to be laid out in manner thereby directed; And it was ordered that the sum of 73*l.* cash in the bank remaining to the credit of this cause "The amount of moneys produced by sale of real estates" should be carried over to the said account of the defendant L. L. S. her account of dividends and interest; And it was ordered that the same when so carried over and also the sum of 118*l.* when so paid into the bank by the said defendants J. W. and L. his wife as aforesaid should be also laid

paid into the bank and invested in 3*l.* per cent. annuities;

[ \*814 ] statement of a subsequent order confirming the Master's report and directing the defendants J. W. and wife out of the sum of 438*l.* due from them on account of the rents of the premises, to pay five sums of 63*l.*, and the residue to be paid into the bank to the petitioner's account;

Reference directed to the Master to tax all parties their costs, and directing a sale of so much of the amount of stock produced by sale of the estates as would be sufficient to raise the amount thereof, and also the said two sums of 1000*l.* and 500*l.*, and directing the payment of those two sums in five shares;

also directing certain sums to be carried over to the petitioner's account, and to be invested in 3 per cent annuities.

[ \*815 ]

And the dividends from time to time accruing due to be invested in life bank annuities to the petitioner's account;

also stating that the defendants J. W. and wife paid the five sums of 63 $\frac{1}{2}$ %. to the parties named in the order, and paid the balance 118 $\frac{1}{2}$ % into the bank, which with 73 $\frac{1}{2}$ % were laid out in bank annuities.

Statement of the amount of costs taxed,

and of the amount of stock purchased with the moneys produced by sale of the estates remaining after making the sales directed; Statement of the amount of the accumulations in respect of dividends;

out in the purchase of bank 3 per cent. annuities in the name and with the privity of the said Accountant-General in trust in this cause, "The defendant L. L. S. her account of dividends and interest," subject to the further order of the court; And it was ordered that the dividends from time to time to accrue due on the said bank annuities when purchased, and also the dividends to accrue due on the residue of the said 4871 $\frac{1}{2}$ % bank 3 per cent. annuities standing in the name of the said Accountant-General in trust in this cause, "The amount of moneys produced by sale of real estates," after such sale as aforesaid and on the accumulations thereof respectively should be from time to time laid out in the purchase of like bank annuities in the name and with the privity of the said Accountant-General in trust in this cause, "The defendant L. L. S. her account of dividends and interest," subject to the further order of the court; That the said defendants J. W. and L. his wife duly paid the said five sums of 63 $\frac{1}{2}$ % to the several parties in the said order named, and the residue of the said sum of 438 $\frac{1}{2}$ % so reported due from them as aforesaid and being the sum of 118 $\frac{1}{2}$ % the said defendants paid into the bank to the credit of the said cause, "The defendant L. L. S. her account of dividends and interest," as also directed by the said order and the same when so paid in together with the said sum of 73 $\frac{1}{2}$ % cash in the bank to the credit of the said cause, "The amount of moneys produced by sale of real estates," was pursuant to the said order laid out in the purchase of the sum of 251 $\frac{1}{2}$ % bank 3 per cent. annuities in trust in this cause, "The defendant L. L. S. her account of dividends and interest," and the costs of all parties were taxed by the Master under the said order and amounted altogether to the sum of 270 $\frac{1}{2}$ % as appeared by his certificate thereof, which together with the said two sums of 1000 $\frac{1}{2}$ %, and 500 $\frac{1}{2}$ % making in all 1770 $\frac{1}{2}$ % were raised by the sale of 2325 $\frac{1}{2}$ % bank 3 per cent. annuities, part of the sum of 4871 $\frac{1}{2}$ % bank 3 per cent. annuities mentioned in the said order, and such costs together with such two sums of 1000 $\frac{1}{2}$ % and 500 $\frac{1}{2}$ % were paid and divided in manner and according to the directions of the said order as appears by the said Accountant-General's certificates thereof, whereby there was left standing in the name of the said Accountant-General in trust in this cause, "The amount of moneys produced by sale of real estates" the sum of 2545 $\frac{1}{2}$ % bank 3 per cent. annuities and on the defendant L. L. S. her account of dividends and interest the said sum of 251 $\frac{1}{2}$ % bank 3 per cent. annuities; that the dividends which have accrued due on the said sum of 2545 $\frac{1}{2}$ % bank 3 per cent. annuities the amount of moneys produced by sale of real estates have been from time to time as the same have accrued due carried over to the said account entitled "The defendant L. L. S. her account of dividends and interest," and have been together also with the dividends on the said sum of 251 $\frac{1}{2}$ % 3 $\frac{1}{2}$ % per cent. annuities standing in the said last mentioned account and the accumulations thereon respectively laid out in the purchase of other like annuities whereby there is now standing in the name of the said Accountant-General in trust in this cause, and said account entitled "The defendant L. L. S. her account of dividends and interest," the sum of 956 $\frac{1}{2}$ % bank 3 per cent. annuities and the sum of 13 $\frac{1}{2}$ % cash as appears

by the said Accountant-General's certificate thereof; that the petitioner attained her age of twenty-one years on the 3d day of May last, and is ready and willing and hereby offers to execute all \*proper and necessary conveyances and assignments of the said several estates and premises so sold as aforesaid unto the respective purchasers thereof, and the petitioner has already become absolutely entitled to have transferred to her the said sum of 956*l.* bank 3 per cent. annuities standing in the name of the said Accountant-General in trust in this cause, "The defendant L. L. S. her account of dividends and interest," and to have paid to her the said sum of 13*l.* cash to the credit of the said last-mentioned account as aforesaid, and upon the execution of such several conveyances will be entitled to have transferred to her the said other sum of 2545*l.* bank 3 per cent. annuities, also standing in the name of the said Accountant-General in trust, in this cause, "The amount of moneys produced by sale of real estates," and to be paid any cash which might accrue thereon previously to such transfer; And praying that the said Accountant-General might be forthwith ordered to transfer into the name of the petitioner the said sum of 956*l.* bank 3 per cent. annuities so standing in his name in trust in this cause, "The defendant L. L. S. her account of dividends and interest," and to pay unto the petitioner's solicitor on account of his costs the said sum of 13*l.* cash in the bank to the credit of this cause the like account, and that upon the due execution by the petitioner of the several conveyances and assurances of the said estates so sold as aforesaid, to the said purchasers thereof, the same to be verified by affidavit, the petitioner might have also transferred into her name the said sum of 2545*l.* bank 3 per cent. annuities so standing in the name of the said Accountant-General in trust in this cause, "The amount of moneys produced by sale of real estates" as aforesaid, and might also have paid to her any future dividends which may accrue due thereon previous to such transfer thereof; Whereupon, &c. upon hearing the said petition, the said will, the said order dated the 23d day of December 1817, the said order dated the 13th day of February 1821, the said report dated the 27th day of January 1821, an affidavit of L. W. the wife of the defendant J. W. whereby it appears that she is the mother of the defendant L. L. S. and that the said L. L. S. has attained her age of twenty-one years, and that she is sole and unmarried, and the Accountant-General's certificate read and what was alleged by the counsel for the petitioner and for the said parties and purchasers, THIS COURT DOETH ORDER that the 956*l.* bank 3 per cent. annuities standing in the name of the Accountant-General of this court in trust in this cause, "The defendant L. L. S. her account of dividends and interest," together with any interest which shall accrue on the said bank annuities previously to the transfer thereof hereby directed, be transferred and paid to the defendant L. L. S. spinster; And it was ordered that the sum of 13*l.* cash in the bank to the credit of this cause the like account be paid to Mr. C. S. the petitioner's solicitor on account of his costs; And upon the due execution by the petitioner of the several conveyances and assurances of the said estates sold as in the petition mentioned to the several purchasers thereof, such execution to be

that the petitioner has attained 21, and  
 [ \*816 ]  
 is willing to execute all necessary conveyances to the purchaser.

and praying an immediate transfer of the sum of stock standing in the Accountant-General's name arisen from accumulation of dividends, and payment to her solicitor of the cash in the bank, and upon the execution by petitioner of the conveyances to the purchasers a transfer of the remaining sum of stock purchased with the moneys produced by sale of the estates.

[ \*817 ]      verified by affidavit, It IS ORDERED that the 2545*l.* bank 3 per cent. annuities standing in the name of the said Accountant-General in trust in this cause, "The amount of moneys produced by \*sale of real estates," and the interest to accrue due on the said bank annuities previously to the transfer thereof hereby directed, be transferred and paid to the said defendant L. L. S. spinster; and for the purposes aforesaid the said Accountant-General is to draw on the bank according to the form prescribed by the act of parliament and the general rules and orders of this court in that case made and provided.

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\*XXI. *Order directing the transfer of a sum of stock to the trustees of a settlement, which stock by a former order made before the marriage had been directed to be transferred to the wife upon the execution by her of certain conveyances; vide antea, 811.*

At the Rolls.  
Master of the Rolls.

Monday the 25th day of February, &c. 1828,  
Between J. M. and J. his wife, E. L. and  
M. his wife, . . . . . Plaintiffs.  
and  
J. S., J. W. and L. his wife, &c. &c.  
Defendants.

Recital of petition of the husband and wife and the trustees of their marriage settlement, stating an order directing a transfer to be made to the petitioner L. L. O. then L. L. S. spinster, of a sum of stock standing in the Accountant-General's name upon the execution by her of certain conveyances; that before the final completion thereof and transfer of the fund she intermarried with the peti-

Whereas the Rev. H. O. clerk and L. L. O. his wife (late L. L. S. one of the defendants above named) and the Rev. J. W. (one other of the above named defendants) and the Rev. J. L. W.) clerk did on the 12th day of February 1828 prefer their petition unto the Right Honorable the Master of the Rolls, setting forth that by an order made in this cause bearing date the 8th day of August 1827, It was (among other things) ordered that upon the due execution by the said petitioner of the several conveyances and assurances of the estates sold as in the said petition mentioned to the several purchasers thereof (such execution to be verified by affidavit) the sum of £2545 bank 3 per cent. annuities standing in the name of the Accountant-General of this court in trust in this cause, "The account of moneys produced by sale of real estates," and the interest to accrue due on the said bank annuities previously to the transfer thereof thereby directed should be transferred and paid to the said defendant the said petitioner (and by her then name and addition of) L. L. S. spinster; That before the complete execution of the said several conveyances and assurances of the said estates sold as in the said petition and order mentioned by the said petitioner L. L. O., and before any transfer of the said sum of £2545 bank annuities unto her, she the said petitioner intermarried with and is now the wife of the petitioner H. O., but before the solemnization of such marriage certain indentures of settlement were made and executed bearing date respectively the 3d and 4th days of February now instant, the latter made

\*between the said petitioner L. L. S. spinster of the first part, the petitioner H. O. of the second part, the petitioners J. W. and J. L. W. of the third part, and P. P. and P. B. L. therein described, of the fourth part, whereby after reciting (amongst other things) that the said petitioner L. L. O. (then L. L. S.) was possessed of or entitled (*inter alia*) to the said sum of 2552*l.* bank 3 per cent. annuities standing in the name of the said Accountant-General, and which would be transferred unto her immediately upon the execution of certain conveyances to be certified by affidavit, and that a marriage had been agreed upon and was shortly intended to be had and solemnized between the said H. O. and L. L. S., and that upon the treaty for the said marriage it was stipulated and agreed (amongst other things) that the said sum of 2545*l.* bank 3 per cent. annuities should be settled and assured upon and for the trusts intents and purposes and with under and subject to the powers provisoes declarations and agreements thereafter expressed and declared of and concerning the same; It was (amongst other things) witnessed that in pursuance of the said stipulation and agreement and for effectuating the same, and for and in consideration of the said marriage, he the said H. O. for himself his heirs executors and administrators and also for the said L. L. S. his said intended wife did covenant promise engage and agree, and the said L. L. S. did with the privy consent and approbation of the said H. O. (testified as therein mentioned) for herself her heirs executors and administrators further consent covenant declare and agree to and with the said J. W. and J. L. W. their executors administrators and assigns, that in case the said intended marriage should take effect they the said H. O. and L. L. S. should and would with all convenient speed after the solemnization thereof make do and execute or cause and procure to be made done and executed or join and concur in and procure all proper and necessary parties to join and concur in all such acts deeds matters things transfers and assurances as by the said J. W. and J. L. W. or the survivor of them or by their or his counsel should be required for effectually transferring and making over the said sum of 2545*l.* bank 3 per cent. annuities which were so standing in the name of the said Accountant-General and to which the said L. L. S. was so entitled as aforesaid so and in such way and manner as that the same bank annuities might be vested in or in the joint names of the said J. W. and J. L. W. their executors administrators and assigns upon the trusts and to and for the ends intents and purposes and with under and subject to the powers provisoes declarations and agreements therein-after particularly declared of and concerning the same; That the petitioner the said L. L. O. has now fully completed the execution of the said several conveyances and assurances of the said estates sold as in the said order mentioned, and is thereby become entitled to have the said sum of £2545 bank 3 per cent. annuities transferred, and the petitioners are desirous that the same should be transferred into the names of the said J. W. and J. L. W. pursuant to their said covenant in that behalf; That since the date of the said order the sum of £38 cash has arisen and now stands to the

tioner H. O.; that previously thereto a settlement was executed whereby L. L. S. covenanted to transfer the stock to trustees upon the trusts therein mentioned;

that the petitioner L. L. O. has fully completed the execution of the conveyances, and is desirous to have the fund transferred to the trustees of the settlement;

that a half-year's dividend is due, which the petitioners are desirous should be paid to their solicitor, and praying that the fund may be transferred to the petitioners the trustees of the marriage settlement,

and the amount of the dividends due thereon be paid to the petitioner's solicitor.

\*credit of the said cause the before-mentioned account for half a year's dividend upon the said sum of 2545*l.* bank annuities, which sum the petitioners H. O. and L. L. O. his wife are desirous should be paid unto their solicitor on account of his costs of obtaining the said order and of this application; And therefore praying that the sum of 2545*l.* bank 3 per cent. annuities standing in the name of the Accountant-General in trust in this cause, "The account of moneys produced by sale of real estates," and mentioned in and directed by the said order of the 8th day of August last to be transferred to the petitioner L. L. O. by her then name and description of L. L. S. spinster might be transferred unto the petitioners J. W. and J. L. W. upon the trusts and to and for the ends intents and purposes and with under and subject to the powers provisoes declarations and agreements mentioned and declared in and by the said indenture of settlement of the 2d day of February now instant of and concerning the same; and that the sum of 38*l.* cash in the bank to the credit of this cause the like account might be paid to the petitioner's solicitor on account of his costs of obtaining the said order and of this application; Whereupon, &c. upon hearing the said petition, the said order dated, &c., the said indenture of settlement dated, &c. and the affidavit of P. B. L. whereby it appears that the said conveyances and assurances have been duly executed, and an affidavit of the said P. B. L. identifying the said indenture of settlement, and that there is not any other settlement of the fund in question, and the Accountant-General's certificate read, and what was alleged by the counsel for the petitioners, HIS HONOR DOTH ORDER that the 2545*l.* bank 3 per cent. annuities standing in the name of the Accountant-General of this court in trust in this cause, "The account of moneys produced by sale of real estates," directed by the order of the 8th day of August last to be transferred to the petitioner L. L. O. by her then name and description of L. L. S. spinster, be instead thereof transferred to the petitioners the defendants J. W. and J. L. W. upon the trusts and to and for the ends intents and purposes and with under and subject to the powers provisoes declarations and agreements mentioned and declared in and by the indenture of settlement of the 4th day of February instant in the petition mentioned of and concerning the same, it appearing by the affidavit of P. B. L. that the several conveyances and assurances mentioned in the former order have been duly executed by the petitioner L. L. O.; And it is ordered that the sum of \$38 cash in the bank remaining on the credit of this cause the like account be paid to Mr. C. S. the petitioner's solicitor on account of his costs of obtaining the said order and of this application; And for that purpose the said Accountant-General is to draw on the bank according to the form prescribed by the act of parliament, and the general rules and orders of this court in that case made and provided.

*\*XXII. Order for a will to be delivered out of the Prerogative Court in order to be proved on a commission, security being first given for the return of the same.*

Upon opening, &c. by Mr. M. of counsel for the defendant T. A. it was alleged that this cause came on to be heard, &c.; and it was ordered that the same should stand over with liberty for the defendant T. A. to prove the will of W. A. dated, &c. made and executed by him at B. in France, whereof defendant T. A. is the only devisee and executor; That the said defendant on the death of the said testator proved the will in common form, and thereupon the said testator's original will was deposited in the Prerogative Court of C.; That — W. one of the witnesses to said will is master of a packet-boat which goes from D. to C. and B. in F., and — H. one of the other witnesses to the said will now resides at B. aforesaid, and — B. the other witness lives in L.; That as said defendant T. A. cannot get the said — W. up to L. or the said — H. to come over from B., it is necessary that he should have a commission to be executed at D. and B. in order to examine the said witnesses to prove the said will, at which commission it will be necessary that the said will be produced; and it being customary in such cases for the Prerogative Office to deliver out original wills to be proved at places distant, on taking bond from one or more sufficient persons in a reasonable penalty to return the same, the said defendant T. A. hath applied to the register and record-keeper of said Prerogative Court to have said will delivered out accordingly, but they refuse to deliver out the same upon any security, but insist upon sending a messenger of their own with it, which will put the said defendant to a considerable expense; It was therefore prayed that, &c.; Whereupon and upon hearing, &c. HIS LORDSHIP DOTH ORDER that the said defendant T. A. be at liberty to take out a commission for the examination of his witnesses at B. and D. aforesaid to prove the said will, and that the plaintiff and the other defendants in this cause do join in commission and strike commissioners' names within six days after notice hereof, and in default thereof, that the said defendant T. A. be at liberty to sue out such commission directed to his own commissioners; and it appearing that the defendant T. A. is the only devisee who can claim any real estate under the said will, It is ordered that the original will be delivered out by the proper officer of the Prerogative Court to a proper person to be named by the said defendant in order to be proved at the said commission, such person first giving security to be approved of by the Judge of the Prerogative Court to return the same in — from the delivery thereof to him.

*\*XXIII. Order for the like purpose as the preceding order.*

Upon opening, &c. by Mr. Attorney-general of counsel for the plaintiffs and defendants in this cause, it was alleged that W. R. having in his life-time contracted several debts, on the — day of — made his will, and thereby devised to the defendants L. H. and W. R. his son all his real estate in trust to be sold for payment of his debts, and appointed them executors, and died in —, soon after which the defendants his executors proved the same in common form, and thereupon the said testator's original will was deposited in the Prerogative Office, and that the plaintiffs in — Term exhibited their bill in this court against the defendants for an account of the said testator's personal estate, and to have the said will proved and the testator's real estate sold for payment of his debts, to which the said defendants have appeared and put in their answers and plaintiffs have replied, and the cause being at issue, a commission issued for the examination of witnesses in the county of —, at which commission it will be necessary to have the said testator's will proved in regard the defendant W. R. who is heir at law to said testator is an infant, and it being customary in such cases for the Prerogative Office to deliver out original wills to be proved in the country, on taking bond from one or more sufficient persons in a reasonable penalty, the parties in this cause have applied to the registers of the Prerogative Court to have the same delivered out accordingly, but they refuse to deliver out same on any security, but insist to send a messenger of their own with it, which will put the parties to a considerable expense; and in regard the testator's estate is not sufficient for payment, it was therefore prayed that the registers of the Prerogative Court or their deputy may forthwith deliver out the said original will in order that the same may be proved at the said commission, upon giving sufficient security to bring back and re-deliver same unto the said office in six weeks; Whereupon and upon hearing Mr. Solicitor-General of counsel for the register of the Prerogative Court, an order in a cause of L. against D. dated —, an order in a cause B. against B. dated —, and an order in a cause S. against B. dated — read, and what was alleged by the counsel for said parties, HIS LORDSHIP DOTH ORDER that the said original will be delivered out by the proper officer of the Prerogative Court of a proper person to be named by the plaintiffs and defendants the said executors and devisees under the said will, in order to be proved at the said commission, such person first giving security to be approved of by the Judge of the Prerogative Court to return the same in six weeks from the delivery thereof to him.



\*XXIV. *Order to compel a witness to attend to be examined, or stand committed.*

Upon motion, &c. that — is a material witness for the plaintiff in this cause, and hath been served with a subpoena returnable immediately to attend and be examined as a witness for the plaintiff in this cause, as by affidavit now produced and read appears, notwithstanding which the said — hath not attended to be sworn and examined, as by the examiner's certificate now also produced and read appears; It is THEREUPON ORDERED that the said — do in four days after personal notice hereof attend and be sworn and examined as a witness for the plaintiff in this cause, or in default thereof that the said — do stand committed to the prison of the Fleet.

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XXV. *Order for liberty to exhibit interrogatories as to the credit of a witness.*

Upon motion, &c. it was alleged that the plaintiffs have examined A. B. as a witness for them in this cause who is a person of ill fame, and the defendant hath exhibited articles in the examiner's office touching the credit of the said A. B. as by certificate appears; It was therefore prayed that the defendant may be at liberty to exhibit interrogatories for the examination of witnesses to the credit of the said A. B. which is ordered accordingly.

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\*CHAPTER XVII.

[ \*823 ]

DECREES AND DECETAL ORDERS.\*

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I. *Decree opening stated accounts, and directing a general account to be taken of all dealings and transactions between the plaintiffs and defendants; costs given as to so much as relates to setting aside the stated accounts.*

His Lordship doth declare that the three stated accounts dated, &c. ought to be opened and set aside and doth order and decree the

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\* Decrees are interlocutory or final. A decree which finally disposes of the subject of litigation, so far as the court is concerned, reserving no further questions or directions for the future judgment of the court, is a final decree, though some further proceedings are to be had before a master, exceptions to whose report may bring the matter again before the court; *Mills v. Hoag*, 7 Paige, C. R. 18; *Vanmeter v. Vanmeter*, 3 Gratt. 148; *Dickenson v. Codwise*, 11 Paige, 189; see *Bates v. Delavan*,

same accordingly; And it is hereby referred to Mr. — one, &c. to take a general account of all dealings and transactions between the

5 Paige, C. R. 299; *Tennent v. Patton*, 6 Leigh, 196; *Wetherford v. James*, 2 Ala. 170; *Cook v. Bay*, 4 How. (Miss.) 485; *Talbot v. Todd*, 7 J. J. Marsh. 456; *Graham v. Elmore*, Harring. Ch. 265; such as the appointment of a commissioner to sell a part of the subject of controversy, and account for, and pay the proceeds to the parties, with liberty to them to apply to the court to add other, or substitute new commissioners, or for a partition of the subject directed to be sold in kind; *Harvey v. Branson*, 1 Leigh, 108; or a reference to a master to ascertain the amount of the debt. *Johnson v. Everett*, 9 Paige, C. R. 636. A decree of foreclosure and sale of the premises, in a bill to foreclose a mortgage, is a final decree. And a sale under the decree, after the death of a defendant, without a revival of the suit, is not an error for which the decree will be reversed on a bill of review. *Whiting v. Bank United States*, 13 Pet. 6.

Where a claim in the original bill becomes unimportant before decree, and the decree does not pass upon it, but disposes of all other matters in the suit, the decree is final; *Ruff v. Starke*, 3 Gratt. 134; and a decree appointing a trustee to sue under a deed of trust, is final as to this matter, and binding alike on strangers and on parties to the decree. *Griffin v. Doe*, 12 Ala. 783. A decree becomes final and conclusive at the adjournment of court, even if it did not become so by enrolment; *Sagory v. Bayless*, 13 S. & M. 153; and where a case was fully submitted to the chancellor, although a motion was made that it be dismissed without prejudice, it was held, that the chancellor did not err in making a final decree in the case. *Doggett v. Lane*, 12 Miss. 215. Judgment upon a demurrer in favor of a petition, or against a plea, is not final but interlocutory; and the court must inquire and find the facts; *Warner v. Tomlinson*, 1 Root, 201; *Gray v. Hays*, 7 Humph. 588; for a decree is not final unless all the material facts are ascertained at the time; and a decree referring the cause to a master to ascertain such facts is interlocutory only; *Jaques v. Methodist Episcopal Church*, 17 Johns. R. 548; in like manner, where the further action of the court is necessary to give completely the relief contemplated by the court, there the decree upon which the question arises, is to be regarded not as final but interlocutory. *Cocke v. Gilpin*, 1 Rob. (Va.) 20.

A decree deciding the rights of the parties as to the matter in controversy, and awarding costs, is still but interlocutory if it be referred to commissioners to execute it, and the court has afterwards to act upon the report; *Mackey v. Bell*, 2 Munf. 523; see also *Price v. Nesbit*, 1 Hill, Ch. 445; and a decree ordering an act to be done before the decree can be effectual, is interlocutory. *Hays v. Mays*, 1 J. J. Marsh. 497. Where an account is stated and agreed upon by the parties themselves, it is not error to refuse an interlocutory decree to account, unless there is ground laid to surcharge and falsify the stated account. *Calvil v. Markham*, 3 How. (Miss.) 343. Where money is directed to be paid into court, or property to be delivered to a receiver, or to a new trustee, or where anything is to be done which may be the subject of exception or appeal, the decree is not final but interlocutory only; *Bellamy v. Bellamy*, 4 Florida, 242; and an order in chancery, directing an issue at law, is interlocutory merely, and may therefore be set aside at a subsequent term. *Dabbs v. Dabbs*, 27 Ala. 646.

It is the constant practice to make a decree between co-defendants, founded upon the pleadings and proofs between the plaintiff and defendants, or upon the allegations in the bill admitted by the defendant sought to be charged by his co-defendant, either expressly or by suffering the bill to be taken as confessed; *Jones v. Grant*, 10 Paige, C. R. 348; *Elliott v. Pell*, 1 Id. 263; *Yerby v. Grigsby*, 9 Leigh, 387; *Crawford v. McDaniel*, 1 Rob. (Va.) 448; *Tyson v. Tyson*, 2 Ired. Ch. 137; *Henderson v. McClure*, 2 McCord, Ch. 466; *Motte v. Schult*, 1 Hill, Ch. 146; *Piatt v. Oliver*, 3 McLean, 27; see also, *Law v. Sutherland*, 5 Gratt. 357; *Morris v. Terrell*, 2 Rand. 6; *Contee v. Dawson*, 2 Bland, 264; but although a decree between co-defendants, grounded upon the pleadings between the complainants, may be made, yet such decree, to be binding, must be founded on and connected with the subject-matter in litigation between the complainant and one or more of the defendants. *Gibson v. McCormick*, 10 Gill & J. 65. It seems, however, that there cannot properly be a decree between co-defendants in equity, in any case in which the plaintiff is not entitled to a decree against both or either. *Hubbard v. Goodwin*, 3 Leigh, 492.

Equity will decree against the party ultimately responsible in the first instance, where the parties are before the court at the time of the decree, but not otherwise; *Garnett v. Macon*, 6 Call, 308; therefore, on a settlement of accounts in a court of equity, a decree may be rendered for the defendant for a balance due him against the plaintiff; *Fitzgerald v. Jones*, 1 Munf. 150; and there may be a decree for one defendant against another, where at the same time the decree operates in favor of the com-

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plaintiffs or either of them and the defendants, and also of the value of any timber felled and taken by the defendants from off the plain-

plaint. *McNeil v. Baird*, 6 Munf. 316. A decree may also be made between co-plaintiffs. *Haskell v. Raoul*, 2 Const. Rep. 852. In a suit *in rem*, the court should not render a decree *in personam*, unless the proper parties, as defendants, have answered the bill, and thereby given jurisdiction over the person. *Graham v. Sublett*, 6 J. J. Marsh. 44. One defendant cannot have a decree against a co-defendant, without a prayer for it in his answer, in the nature of a cross-bill; *Myers v. Baker*, Hardin, 544; but a decree may be rendered on the testimony of a co-defendant, if his interest is precisely balanced between the parties to the suit, although he is an indispensable party to the bill. *Montandon v. Deas*, 14 Ala. 33.

In rendering a decree in chancery, the rights of the parties at the time are to be considered, and not as they were at the time of the institution of the suit; *Randel v. Brown*, 2 How. U. S. 406; and the decree must find the facts which warrant it. *Sampson v. Hunt*, 1 Root, 207, 521; *Burdoin v. Shelton*, 10 Yerg. 41. Where several applications are decided, or several directions in the cause are given at the same time, but one order should be entered, embracing the whole. *Hunt v. Wallis*, 6 Paige, C. R. 371. Where various defendants claim, under the same title, a decree directing a joint surrender is proper; *Brand v. Webb*, 2 A. K. Marsh. 574; and it is no objection to a decree, that it is nominally in favor of one defendant against another, if it is substantially in favor of the complainant; *West v. Belches*, 5 Munf. 187; and the court may decree a sale of land subject to a life estate in a third person, directing compensation for the life estate. *Rutledge v. Williamson*, 1 Dessau. 159. A decree ordering a sale of property in the hands of heirs, must specify and identify it; *Gayle v. Singleton*, 1 Stewart, 566; and it is erroneous to decree a conveyance of land, without identifying the bounds with reasonable certainty. *Tribble v. Davis*, 3 J. J. Marsh. 633. A decree should show upon its own face what the court has decided; *Honore v. Cobmesnil*, 1 J. J. Marsh. 506; and a final decree confirming a master's report ascertaining the amount due, and awarding execution thereon is sufficiently certain. *Moore v. Hubbard*, 4 Ala. 187. Informality will not vitiate a decree; *Harland v. Eastland*, Harden, 590; but a court of equity cannot consistently decree the title to one party and the land to another. *Whitesides v. Luckey*, 1 Litt. 80.

It is a settled rule, that a decree must conform to the allegations in the pleadings as well as to the proofs in the cause; *Crocket v. Lee*, 7 Wheat. 522; *Ringgold v. Ringgold*, 1 Har. & G. 11; *Pigg v. Corder*, 12 Leigh, 69; *Cornel v. Banks*, 10 Wheat. 181; *Stuart v. Mechanics and Farmers Bank*, 18 Johns. R. 496; *Cloud v. Whiteman*, 2 Harring. 401; *Smith v. Smith*, 1 Ired. Ch. 88; *Bosman v. Draughan*, 3 Stewart, 243; *Langdon v. Roane*, 6 Ala. 518; *Morgan v. Crabb*, 3 Porter, 470; *Mauzy v. Mason*, 8 Id. 211; *Dickinson v. Morgan*, 8 Dana, 130; *Boucher v. Miller*, Wright, 328; *Handly v. Young*, 4 Bibb, 376; *Delaware and Hudson Canal Company v. Pennsylvania Canal Company*, 21 Penn. (9 Harris), 131; and a complainant cannot obtain a decree for more than he has asked in his bill. *Simons v. Guthrie*, 9 Cranch, 19. And where a bill prays for particular relief, "and other relief," the orator can have no relief inconsistent with the particular relief prayed. *Wiltshire v. Marfleet*, 1 Edw. Ch. 654; *aliter*, where the prayer for further relief is in the disjunctive; *Ib.*; see also, *Clifton v. Haig*, 4 Dessau. 330; *Marine and Fire Insurance Bank v. Early*, Charl. R. M. 279; *Peck v. Peck*, 9 Yerg. 301; *Miami Exporting Company v. United States Bank*, Wright, 249; *Wilkin v. Wilkin*, 1 Johns. C. R. 111; *Driver v. Fostner*, 5 Porter, 9; *Buller v. Durham*, 2 Kelly, 413; *Taylor v. Merchants Fire Insurance Company*, 9 How. (U. S.) 390. A court of equity can only decree upon the case made by the pleadings, although the evidence shows ground for further relief. *Mundy v. Fawter*, 3 Gratt. 518; see also, *Scudder v. Young*, 25 Maine, (12 Shep.) 153; *Horton's Appeal*, 13 Penn. St. R. (1 Harris), 67. And where a bill is properly excepted to, upon the ground of the insufficiency of its averments to charge a party proceeded against, no decree can be pronounced against him, whatever may be the proof. *Berry v. Pierson*, 1 Gill, 234. A decree may refer to the bill for a description of the lands on which it is intended to operate; *Jones v. Belt*, 2 Gill, 106; but it is informal and irregular to make a decree, without setting out the premises upon which it is predicated. *Hartfield v. Brown*, 3 Eng. 283.

Before a final decree can be rendered, all the necessary parties must be before the court, or due notice given them either by service of summons, or by publication, and a decree *pro confesso* entered against those who have failed to answer; *Anthony v. Shannon*, 3 Eng. 52; but a decree may be made against one of two heirs who submits to the jurisdiction, though the other, from non-residence, cannot be made a party to the bill. *Holman v. Bank of Norfolk*, 12 Ala. 369. Where the answer denies the case made out in the bill, but states facts which entitle the party to relief different

tiff's estate, in the taking of which account the Master is to make unto all parties all just allowances; And for the better taking the said account all parties are to be examined upon interrogatories, and produce all books and papers in their custody or power relating thereto upon oath before the said Master as the said Master shall direct; And it is ordered and decreed that defendants do pay to the plaintiffs their costs for as much of the cause as relates to the setting aside the said stated accounts to be taxed by the said Master, and his Lordship doth reserve the consideration of the rest of the costs of this suit until after the said Master shall have made his report, and the said parties are to be at liberty to apply to the court as occasion shall require.

from that asked for in the bill, and expresses a willingness to do equity accordingly, a court of chancery will give a decree to the complainant according to the facts stated in the answer. *Bailey v. Bailey*, 8 Humph. 230. A decree in chancery cannot be rendered against an infant defendant without proof, although the answer filed by his guardian *ad litem* admit the bill to be true. *Hough v. Doyle*, 8 Blackf. 300; *Hough v. Canby*, Ib. 301. Where a decree is rendered against infants, it should give them a day in court to contest the claim of the complainant when they arrive at full age; *Anderson v. Irvine*, 11 B. Monroe, 341; *Dow v. Jewell*, 1 Foster, (N. H.) 470; and neither a default nor a decree *pro confesso* can be taken against an infant, but a guardian *ad litem*, should be appointed for him, who should answer for him, and then the complainant must make full proof of his right to the relief sought; *Enos v. Capps*, 12 Ill. 255; *Heath v. Ashley*, 15 Miss. 393; *Hendricks v. McLean*, 18 Id. (3 Bennett,) 32; *Groce v. Field*, 13 Geo. 24; and a decree cannot be entered against infants without proof to sustain the case. *Hamilton v. Gilman*, 12 Ill. 260.

Where the plaintiff claims against two defendants, to recover as surety for both, alleging they are both principals, he cannot have a decree against one of them as a joint surety; *Howard v. Jones*, 5 Fred. Eq. 75; and where a decree in a bill in equity, by creditors of a deceased person, directs a sale of his property by a commissioner, it should specify the persons to whom, and define the proportions in which the proceeds are to be distributed. *Arnold v. Arnold*, 11 B. Monr. 81. Where a complainant makes several allegations, and only proves a part of them, he is entitled to relief so far as his proof goes; *Lytle v. Pope*, 11 B. Monr. 297; but where a plea to the merits of a bill is found for the defendants, the bill should be dismissed. *Bell v. Simonds*, 14 Miss. 100. Where, however, the allegations of a bill authorize any decree whatever against a defendant who is in contempt, it is error in the chancellor to dismiss it as to him. *Hogan v. Smith*, 16 Ala. 600. A decree, *pro confesso*, cannot be rendered against a defendant who has not been served with process; *Hunter v. Robbins*, 21 Ala. 585; nor can a bill be taken *pro confesso* while a plea in bar remains undisposed of. *Jordan v. Jordan*, 16 Geo. 446. A prayer for relief may be in the alternative, and one or the other may be granted, as the court shall decide. *Ward v. Ward*, 1 Jones, Eq. (N. C.) 334. It is not necessary that a decree should recite the matters proved on which it is based. The pleadings and proofs being now matters of record, the necessity for such recital no longer exists. *Dousman v. Hooe*, 3 Wis. 466. A decree in favor of a fictitious person is a mere nullity. *United States v. Sampersyac*, 1 Hemp. 118.

By the rules of practice for the courts of equity of the United States and the State of Pennsylvania, it is provided, "that clerical mistakes in decrees or decretal orders, or errors arising from any accidental slip or omission, may at any time before an actual enrolment thereof, be corrected by order of the court, or a judge thereof, upon petition, without the form or expense of a rehearing." Also that "In drawing up decrees and orders, neither the bill nor answer, nor other pleadings, nor any part thereof, nor the report of any master, nor any other prior proceeding, shall be recited or stated in the decree or order, but the decree and order shall begin in substance as follows: 'This cause came on to be heard (or to be further heard, as the case may be,) at this term, and was argued by counsel, and thereupon upon consideration thereof, it was ordered, adjudged and decreed as follows, viz.' " [Here insert the decree or order.]

*\*II. Decree for payment of the arrears of an annuity secured by bond given for maintenance with interest upon each half-yearly payment, against the devisee of the real and personal estate of the obligor. (See Newman v. Auling, 3 Atk. 579.)*

This cause came on to be heard 9th November 1747, before the Lord Chancellor, when his Lordship was pleased to order and decree that it should be referred to Master Allen one of the Masters of this Court, to take an account of what was due to the complainant for the arrears of an annuity of 30*l.* a year secured by bond, and to compute interest on each respective half-yearly payment from the end of six months after the same respectively became due after the rate of 4 per cent. per annum; And the defendant having by her answer admitted \*that the personal and real estate of her said father were together more than sufficient to answer the said annuity, It was further ordered that the plaintiff should pay to the said defendant what should be found due for the arrears of the said annuity and interest at such time and place as the said Master should appoint, and continue to pay to plaintiff the growing payments of the said annuity as they should become due half-yearly; And in case the defendant should not pay what should be found due for the arrears of the said annuity and interest as aforesaid, then the plaintiff was to be at liberty to apply to the court for a sale of a sufficient part of the real estate in question; And it was further ordered that the said Master should see a sufficient part of the said real estate set apart for securing to the plaintiff the growing payments of the said annuity during her mother's life; And it was further ordered that the defendant should execute to the plaintiff a proper conveyance of the said estate or grant thereout for securing the growing payments of the said annuity accordingly with the approbation of the said Master; And that the defendant should pay to plaintiff her costs of this suit up to this time to be taxed by the said Master; the consideration of subsequent costs reserved till the Master should make his report; liberty to parties to apply, &c.

An account to be taken of the arrears due and interest at 4*l.* per cent on each half-yearly payment from the end of six months after same became due; the

[ \*824 ] defendant admitting assets directed to pay the amount to be found due as Master should direct; and in default of payment plaintiff to be at liberty to apply for sale of the deceased's real estate; direction to the Master to set apart sufficient real estate to secure the annuity, and the defendant to execute a proper conveyance or grant; defendant to pay costs up to the hearing; subsequent costs reserved.

### III. *Decree by consent directing a reference to arbitration.*

His Lordship doth by consent order that all matters in difference between the plaintiffs and defendants in this cause be referred to the award and determination of I. H. of, &c. esq. so that he shall make and publish his award in writing of and concerning the premises in question on or before — now next ensuing, or on or before such further time as hereinafter mentioned, and that the said parties do stand to abide by perform and fulfil the award which the said arbitrator shall so make of and concerning the premises; And by the like consent it is ordered that the said arbitrator is to be at liberty

Award to be made by a fixed time;

Arbitrator to be at liberty to

examine upon oath the parties and witnesses, before whom to be sworn; all parties to produce deeds, &c. the costs of the suit and of the reference to be in the discretion of the arbitrator who is

[ \*825 ] to be at liberty to enlarge the time for making his award, and to proceed *ex parte* in default of any party attending; No bill to be filed against him; Liberty reserved to the parties to have the award made a rule of court.

to examine upon oath or upon interrogatories or otherwise at his discretion the said plaintiffs and defendants or any of them, or any other person or persons who shall be produced as a witness or witnesses before him by either party, such plaintiffs and defendants or other person or persons being sworn before one of the Masters of this court or before a Master Extraordinary in the country if there shall be occasion; And the said parties are to produce before the said arbitrator upon oath if required all deeds instruments books papers writings and accounts in their or any or either of their custody or power touching the matters in question or any of them as the said arbitrator shall direct; And by the like consent it is ordered that the costs of this suit and also of the said reference and award and all other costs charges and expenses attending or relating to the matters in difference between the said parties or either of them shall be in the discretion of the said arbitrator, and shall be paid in such \*manner and by whom and to whom and at such time or times as shall be directed by his award; And by the like consent it is ordered that the said arbitrator shall be at liberty by writing under his hand to enlarge the time for making his award from time to time as he shall see occasion; and that the said arbitrator may if he thinks fit proceed *ex parte* in the said reference in case of the refusal or neglect of any of the said parties to attend him thereon after reasonable notice in that behalf; And by the like consent it is ordered that no bills or bill are or is to be filed in any court of equity by any or either of the said parties against the said arbitrator for any matter or thing he shall do in about or touching the matters to him hereby referred; And any or either of the said parties are or is to be at liberty to apply to this court to have the said award made an order of this court.

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#### IV. *Minutes of a decree directing a reference to arbitration, with a direction for appointing an umpire in case the arbitrators disagree.*

Let all matters in difference between the parties be referred to the arbitration and determination of T. T. and S. S. and they to make their award on or before —, and in case they shall not agree they are to name an umpire, and he is to make his umpirage on or before —, and both parties are to produce all books and papers relating to the matters in question in their custody or power before the arbitrators and umpire respectively, or such of them as the arbitrators and umpire shall respectively direct, to be ascertained by the oath of the respective parties producing the same, and the award or umpirage is to be made an order of this court, and no bill in equity is to be brought against the arbitrators or umpire.

V. *Decree for establishing a charity.*

His Lordship doth declare that the charitable bequest and uses made and created by the will of W. B. ought to be established and the trusts thereof performed and carried into execution, and doth order and decree the same accordingly; And his Lordship doth order that the information as against the defendant T. S. do stand dismissed out of this court with costs, &c.; And as between the relators and the other defendants it is ordered and decreed that it be referred to Mr. — one, &c. to take an account of the rents and profits of the charity estate accrued since the death of J. B. son of the testator N. B. which have been received by the defendant R. L. and the other defendants or any of them, or by any other person, &c. the Master to make all just allowances, &c. and particularly an allowance of, &c.; \*And it is ordered and decreed that what shall be coming on the balance of the said account be divided into two equal moieties, whereof one moiety is to be paid to or retained by the defendant the Corporation of C. according to the said testator's will, and the other moiety to be paid or retained by the defendants the ministers of, &c. for the charitable purposes devised by the said will concerning the moiety is to be paid to the minister of those parishes; And it is ordered that any of the relators and the Corporation of the City of C. do produce before the said Master a scheme or schemes for the application of what shall be coming on the balance of the said accounts for the moiety of the said rents and profits for the poor inhabitants of the said city of C., and also for that moiety of the growing rents and profits of the said charity estate in such manner as may be most beneficial for said poor inhabitants, and the said Master is to state the same with his opinion thereon; And the number of the trustees mentioned in the last conveyance of the said charity estate being reduced to six, let eighteen other proper persons of the borough of C. or inhabiting near thereto be appointed with the approbation of the Master to be feoffees and trustees of said charity estate, and let the relators and defendants be at liberty to propose proper persons before the Master for that purpose; And when eighteen such persons shall be appointed by the said Master, let defendants, the surviving trustees, convey the said charity estate to the said eighteen persons and their heirs to and upon the charitable uses and trusts declared in the said schedule annexed to —; And let the Master settle the conveyances in case the parties differ about the same.

Decree the charitable bequest to be established, the information to stand dismissed against one defendant with costs; an account to be taken of the rents of the charity estate,

[ \*826 ] the balance of the account to be divided into moieties and paid as directed by the will. Schemes to be produced before the Master for the application of one moiety of such balance, and of the growing rents; new trustees to be appointed with the approbation of the Master,

and the surviving trustees to convey the charity estate to them to the charitable uses.

VI. *Another form of a decree directing the appointment of new trustees of a charity estate jointly with the surviving trustees.*

And it being admitted that the trustees of the said charity were reduced to three, it was ordered that nine proper persons should be

appointed with the approbation of the said Master to complete the said number of twelve, and when such persons should be appointed, the three remaining trustees should with the approbation of the Master make conveyance of the said charity estate to the use of themselves and the new trustees so to be appointed, subject to the same charitable uses and trusts.

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VII. *Decree on a bill by creditors against an executrix.*

[ \*827 ] Whereupon, &c. his Honor was pleased to order and decree that it should be referred to Mr. S. one of the Masters of this honorable court, to take an account of what was due to the plaintiffs and to \*all other the creditors of the said testator A. I. and of his funeral expenses, and to compute interest on such of his debts as carried interest after the rate of interest they respectively carried; and the said Master was to cause an advertisement to be published in the London Gazette and such other public papers as he should think proper, for the creditors of the said testator to come in before him and prove their debts, and he was to fix a peremptory day for that purpose; and such of them who should not come in and prove their debts by the time so to be limited were to be excluded the benefit of the said decree, but such persons not parties to the said suit who should come in before the said Master to prove their debts, were, before they should be admitted creditors, to contribute to the plaintiffs their proportion of the expense of the said suit to be settled by the said Master; And it was ordered that the said Master should also take an account of the said testator's personal estate come to the hands of the said C. I. his executrix, or to the hands of any other person or persons by her order or for her use, and the said testator's personal estate was to be applied in payment of his debts and funeral expenses in a course of administration; and for the better taking of the said accounts, &c. [*usual directions given.*]

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VIII. *Part of an order directing the delivery of deeds and attested copies, and the execution of deeds of covenant for the production of deeds.*

Let such of the title-deeds and writings as relate solely to the estate comprised in lot —, and also such as relate to the same estate jointly with other estates of less value, be delivered to —, he submitting to produce the last-mentioned deeds and writings on necessary occasions and to enter into covenants for that purpose and to give attested copies thereof if required at the expense of the party requiring the same; and as to such of the title-deeds and writings as relate to the estate comprised in the said lot — jointly



with other estates of greater value, he is to have attested copies if required at the expense of the estates, and the persons entitled to such estates are to execute to him the like deed or deeds of covenant to produce the same on necessary occasions; and in case any dispute shall arise between the parties touching the copies of any particular deeds or writings relating to the title, the Master is to settle the same.

### IX. *Decree for dower out of freehold and copyhold lands.*

His Lordship doth order that it be referred to the Master to inquire what freehold lands the said S. M. died seised of wherein the plaintiff B. M. is dowable, and also to inquire what copyhold or customary lands the said S. M. died seised of wherein plaintiff B. M. is entitled to dower or any other estate by the custom of the manor wherein the said copyhold or customary lands or any of them do lie; And that the said Master do assign to the plaintiff B. M. her dower in such freehold lands and tenements, and also her dower and widow's estate in such customary or copyhold lands and tenements, and the said Master is to assign and set out particular lands and tenements for that purpose; And after the said lands and tenements shall be set out and ascertained, it is ordered that the defendant do deliver possession to plaintiff B. M. of the lands and tenements that shall be so set out and ascertained for the said dower or widow's estate of plaintiff B. M., and the tenants thereof are to attorn and pay their rents to the said plaintiff B. M.; And it is ordered and decreed that the Master do take an account of the rents and profits of the said freehold and copyhold or customary lands and tenements whereof the said S. M. died seised, accrued since the death of the said S. M., which have been received by the said defendant, or by any other person by his order or for his use; And that one third-part of what shall be coming on said account of the rents and profits of such freehold lands and tenements is to be paid to plaintiff B. M. by the said defendant in respect of her dower out of such lands and tenements, and that such part of what shall be coming on said account of rents and profits of the said copyhold or customary lands and tenements as the said plaintiff B. M. shall appear to be entitled to in respect of her said dower or other widow's estate in such copyhold or customary lands and tenements, is to be paid to the said plaintiff B. M. by the said defendant; And for the better taking the said account and discovery of the matters aforesaid the said defendant is to produce before the said Master upon oath all deeds writings papers and books of account in his custody or power relating to the matters in question, and both sides are to be examined upon interrogatories as the said Master shall direct, and the said Master is to make unto both sides all just allowances; And it is ordered that the said defendant do pay unto the plaintiff B. M. her costs of this suit to this time to be taxed by the said Master, of which the said Master is to make a separate report; And his Lordship doth reserve the con-

Inquiry directed of what [ \*828 ] freehold and copyhold lands deceased died seised; Master to assign plaintiff her dower in the freehold and her widow's estate in the copyhold lands, and to set out the particular lands, and when set out, possession thereof to be delivered to the plaintiff, and the tenants to attorn; An account to be taken of the rents of the freehold and copyhold estates accrued since the death of the plaintiff's husband, and one third part of what shall be found due to be paid to the plaintiff by the defendant; Defendant to produce all deeds, &c. Master to make all just allowances; Defendant to pay the plain-

tiff her costs up to the hearing ; Subsequent costs reserved. Plaintiff intending to controvert the deceased's will, further directions reserved.

sideration of subsequent costs as between the plaintiff B. M. and defendant until the Master shall have made his report ; And it being declared by the counsel for the plaintiff that they do intend to controvert the probate of the will of the said S. M. insisted on by the said defendant in the Ecclesiastical Court, his Lordship doth reserve liberty to any of the parties to apply to the court for further directions in respect of any other demands made by the bill in respect either to the real or personal estate of the said S. M. as occasion shall require.

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[ \*829 ]

*\*X. Decree for foreclosure.*

His Lordship doth order and decree that it be referred to Mr. E. one, &c. to see what is due to the plaintiff for principal and interest on his mortgage and to tax him his costs of this suit, and the defendant is to pay unto the plaintiff what shall be reported due to him for such principal interest and costs within — after the said Master shall have made his report, at such time and place as the said Master shall appoint, and thereupon the said plaintiff is to reconvey the said mortgaged premises free and clear of all incumbrances done by him or any person claiming from by or under him, and to deliver up upon oath unto the defendant or to whom he shall appoint, all deeds and writings in his custody or power relating thereto ; But in default of the said defendant paying unto the said plaintiff such principal interest and costs as aforesaid by the time aforesaid, the said defendant is from thenceforth to stand absolutely debarred and foreclosed of and from all equity of redemption of in and to the said mortgaged premises.

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*XI. Minutes of a decree by consent, directing the plaintiff to confirm the defendant's jointure in the settled estates, and when confirmed, the defendant to produce all deeds in her possession or power relating thereto.*

And the plaintiff Sir W. A. now offering to confirm the jointure of the defendant C. A. in the several estates settled upon her in jointure by the deeds dated, &c., Decree that plaintiff Sir W. A. do confirm the jointure of said defendant C. A. in all the said estates as the Master shall direct ; and let the Master settle the deeds or assurances for the confirmation of such jointure in case the parties differ about the same ; And after such jointure shall be confirmed as aforesaid, let defendant C. A. produce before the said Master upon oath all deeds and writings in her custody or power relating to the several estates comprised in the settlement dated, &c. ; and reserve the consideration of all further directions until after the deeds and writings shall be produced.

**XII. Minutes of a decree declaring the plaintiff to be entitled to a jointure, and directing the defendant to convey to her the lands to be set out by the Master.**

Declare that plaintiff is entitled in equity to have a jointure of —l. a year made good to her out of the estate in question according to the settlement, &c.; and therefore refer it to the master to set out and allot so much of the lands and premises comprised in the said settlement of, &c. as shall amount to and not exceed the value of —l a-year, subject to taxes and repairs, for plaintiff's \*jointure for her life; And let defendant M. H. settle and convey such lands and premises so to be set out and allotted as aforesaid to plaintiff for her life for her jointure by such conveyances and assurances as the said Master shall think fit, free from all incumbrances done by defendant M. H., and let all proper parties join in such conveyances as the said Master shall direct: And let defendant M. H. deliver possession to plaintiff of the lands and premises which shall be so allotted and set out with the appurtenances; And let the plaintiff enjoy the same for her life against defendant M. H. and all persons claiming under him or E. H. her late husband deceased, and let all deeds and writings relating to the estate in question be produced before the Master upon oath.

Reference to the Master to set out lands of sufficient value,  
[ \*830 ]  
defendant to execute proper conveyances,  
and deliver possession of the lands to be set out.

**\*XIII. Decree directing the execution of several leases;—accounts to be taken of principal and interest due on several mortgages,—and also of the arrears of rents in respect of different parts of the premises in question according to certain drafts of leases and agreements between the parties, with a direction to the Master to set an occupation rent on other parts of the premises, and to ascertain what is due in respect thereof; a set-off directed as between the amount of the account of rent to be found due from one defendant, and the amount of principal and interest to be found due on her mortgage; the bill dismissed as to certain defendants with costs; there having been several former hearings which proved fruitless, special directions given as to the costs of them.**

At the Rolls.  
Master of the Rolls.

Monday the 26th day of November, &c. 1827.

Between S. Page . . . . Plaintiff,  
and

J. Brown, J. Harris, &c. Defendants,  
By original bill;

and  
Between S. Page . . . . Plaintiff,  
and

P. F. Page . . . . Defendant,  
By supplemental bill.

These causes coming on the 12th, 13th, 15th, and 19th days of

Original bill praying that an account may be taken of what is due to the plaintiff, that an agreement may be performed, and a lease executed to the plaintiff;

[\*831]

that an account may be taken of what is due from a defendant in respect of a sum of 1000*l.* and interest thereon, and also in respect of the rent agreed to be paid by her and interest thereon, and to have a lien on her part of the premises for the amount;

that an account may be taken of what is due in respect of two annual sums agreed to be paid by another defendant with interest thereon, and to have a lien on his interest in the premises;

And if necessary that such of the rents not applicable to the payment of plaintiff's demands may be applied in discharge of prior incumbrances;

that a mortgage debt due to two other defendants may be consi-

November 1827 to be heard and debated, &c. the substance of the plaintiff's bill appeared to be, That, &c. [*after stating the substance of the bill, the decree set forth the prayer of the bill as follows:*] That an account may be taken of what is now due to the plaintiff under and by virtue of the aforesaid agreements or otherwise; And that the said agreement may be specifically performed and carried into execution, and that a lease of the said premises thereby agreed to be demised to the plaintiff may be executed by all necessary parties, the plaintiff being ready and willing to do all things to be done therein on his part and behalf; And that an \*account may be taken of what is due from the said Mary Linwood in respect of the said sum of 1000*l.* so agreed to be paid to the plaintiff with interest thereon from the time the same ought to have been paid, and also in respect of the said annual rent of 250*l.* with interest from the times such annual sums ought respectively to have been paid, and that what shall be so found to be due may be paid to the plaintiff, and that the plaintiff may be declared to have a lien upon the said Mary Linwood's estate and interest in the said premises for the payment thereof, and that the same may be raised and paid thereout accordingly in reduction of the plaintiff's said demand; And that an account may be also taken of what is now due in respect of the said two annual sums of 200*l.* and 200*l.* so agreed to be paid by the said T. Willows together with interest thereon from the times the same ought respectively to have been paid, and that the plaintiff may be declared to have a lien upon all the estate and interest of and in the said premises which belonged to the said Thomas Willows for payment of the amount of what shall be so found to be due, together with so much of the plaintiff's demands as shall remain unpaid by the means aforesaid, and that the same may be raised and paid thereout to the plaintiff accordingly, and that the plaintiff may have the full benefit of the aforesaid securities for the payment of what is so due to him; And if necessary for that purpose, that such of the rents and profits of the said premises, if any, as are not applicable to the payment of the plaintiff's aforesaid demands may be applied in discharging all such incumbrances upon the said premises as have priority to the plaintiff's aforesaid demands; And that the mortgage debt due to the said John Broom and Herbert Broom may be considered as satisfied to the amount of the rents and profits of the said premises received by them and of the occupation value of such parts of the said premises as have been occupied by them, and that accounts of such rents and profits and occupation value may be taken accordingly; and that all other necessary directions may be given for the purpose of paying or securing to the plaintiff the payment of what is so due to him out of the said premises; And that some proper person may be appointed receiver of the said premises, and particularly of such parts thereof as were so agreed to be demised to the plaintiff for securing his aforesaid demands; And that the rents and profits thereof may be applied according to the provisions of such agreements, and to be relieved is the scope of the bill; [*and after stating the substance of the defendants' answers, the decree proceeded thus:*] That T. Willows being dead, the plain-

tiff though it advisable to institute a suit in the Prerogative Court for the purpose of procuring administration of the estate and effects of the said T. W., and accordingly letters of administration of the estate and effects of the said T. W. were duly granted by such court to P. F. P., but limited to the purpose only of attending supplying substantiating and confirming the proceedings already had or which might be thereafter had in the aforesaid cause or suit or in any other cause or suit which might thereafter be commenced in this or any other court between the aforesaid parties or any other parties touching or concerning the aforesaid premises, or until a \*final decree should be had and made therein, and the said decree carried into execution, and the execution thereof finally completed; And the plaintiff thereupon filed the supplemental bill in this court against the said defendant P. F. P., stating the several matters aforesaid, and thereby praying that the plaintiff may have the same relief against the said P. F. P. as if he had been originally a party defendant to the said original bill; Where to the counsel for the defendant P. F. P. alleged that he by his answer saith he admits, &c., [*admitting the letters of administration granted, the proceedings had in the original cause, and claiming such interest as he might appear to be entitled to as such personal representative.*] Whereupon and upon debate of the matters and hearing an exhibit, &c. &c. read, and what was alleged by counsel on both sides, his Honor did order that this cause should stand for judgment; And this cause standing this present day in his Honor's paper of causes for judgment accordingly, in the presence of counsel learned on both sides, and the defendants J. B. and R. B. by their counsel at the bar now consenting that the four several exhibits marked, &c. being drafts of leases in the possession of the defendant M. L. and proved by her in this cause shall be considered by this court as proved by the plaintiff against the said defendants J. B. and R. B., HIS HONOR DOTH DECLARE that the plaintiff is entitled to have the lease to him, the two several leases from him, and the underlease from the defendant Mary Linwood to him executed by all proper parties according to the drafts prepared by Mr. White in the year 1809 and approved of on the part of the plaintiff, with this difference, that the lease thereby proposed to have been made by the plaintiff to Thomas Willows in the bill named is to be made to John Broom, H. Broom, and John Harris or those who represent them who by virtue of the agreement in the pleadings mentioned as between the said T. Willows and the said J. B., H. B. and J. H. are entitled thereto, and with this difference also, that if the mortgage to the defendant John Broom and the late Herbert Broom shall appear to be satisfied, the plaintiff Samuel Page is entitled to have the lease granted to him for the additional term of fifty years at the rent of 40s. per annum; And it is ordered that all proper parties do execute the same and counterparts thereof; And it is further ordered that as soon as such lease shall have been executed to the said plaintiff as aforesaid, the said plaintiff do forthwith grant and execute to the said defendant M. Linwood a demise of the said premises agreed to be let to her according to the lease prepared by the said Mr. White, to hold for forty-seven years and three quarters wanting ten days from the

dered as satisfied to the amount of rent received by them and of the occupation value of such part of the premises as was occupied by them, and to have an account taken thereof accordingly;

[ \*832 ]

and for the appointment of a receiver. Recital in the decree that a defendant being dead, letters of administration limited the matters in question were granted to the defendant in the supplemental suit, and that the plaintiff thereupon filed a supplemental bill, praying to have the same relief against the administrator as if originally a party.

Decree.—Leases and underleases to be executed according to the drafts originally prepared and approved of, with certain variations, as stated in the decree;

Upon the execution of the lease to the plaintiff, he to execute a lease to defendant M. L. of certain portions of the premises

es according to the draft lease originally prepared, and thereupon plaintiff to be entitled to receive from her a sum of 1000*l.* with arrears of interest thereon;

[ \*833 ]

An account to be taken as principal and interest due in respect of the 1000*l.* also an account of the arrears of the rent of 250*l.* due from defendant M. L., the Master to make her all just allowances in respect of rates, taxes, &c.

An account to be taken of principal and interest due to her in respect of her mortgage, and of costs sustained by her in certain suits or in relation to her mortgage;

The plaintiff having agreed to become assignee of the mortgage, the difference of the accounts directed to be taken as between him and the defendant M. L. to be paid according to the result of the balance between such accounts; and thereupon M. L. to transfer her mortgage

25th of December 1807, at the annual rent of 250*l.* to be paid and payable according to the said agreement of the 21st November 1808; And his Honor doth declare that upon such lease being executed by the said plaintiff, the plaintiff will be entitled to receive from the said defendant M. Linwood the sum of 1000*l.* agreed by the said agreements of the 27th June 1806 and 21st November 1808 to be paid to him, with interest on the same after the rate of 4 per cent. per annum, according to the instalments and from the respective times when such instalments were to have been paid \*according to the said agreement of 21st November 1808 and the draft of the said lease prepared by the said Mr. White; And it is ordered that it be referred to the Master in rotation to take an account of what is due for principal and interest in respect of the said sum of £1000 as aforesaid; And it is ordered that the said Master do also take an account of what is due from the said defendant Mary Linwood to the plaintiff in respect of the rent of £250 per annum from the 25th day of December 1807, being the time from which such rent was reserved, &c. &c. payable in and by the said draft lease prepared by Mr. White as aforesaid; and the said Master in taking such last-mentioned account is to make unto the said M. L. all just allowances for and in respect of all or any rates taxes assessments and other proper disbursements paid laid out assessed and made upon or by her; And it is ordered that the said Master do take an account of what is due to the said M. L. for principal and interest in respect of her mortgage in the pleadings mentioned, and also an account of the costs charges and expenses which she has paid been put to or sustained in certain suits entitled "Browning against Willows," and "Broom against Linwood," or in any other suit or suits brought against them as mortgagee or in any wise incidental to or respecting the said mortgage; and it being alleged by the counsel for the plaintiff and the said M. L. that it has been agreed that the said plaintiff shall become the assignee of the said mortgage, It is ordered the difference between the amount of the account of the principal interest and costs of the mortgage and the amount of the account of the rent and of the before-mentioned sum of £1000 and interest after making such allowances thereout as aforesaid above directed to be taken, be paid by the said plaintiff to the said Mary L. or be paid by the said M. L. to the plaintiff according to the result of the balance between such accounts, and if it shall be found that the said mortgage debt with interest and costs aforesaid is satisfied, or upon the balance of such mortgage account being paid to the said M. L. by the plaintiff and such underlease being executed to the said M. L. by the plaintiff as hereinbefore directed, It is ordered that the said M. L. do thereupon transfer and assign her said mortgage unto the said plaintiff S. P. or as he shall direct, and all proper parties are to join in such transfer and assignment, which is to be settled by the said Master in case the parties differ about the same; And it is ordered that the said Master do tax the said M. L. her costs of this suit, and of all costs charges and expenses of the different hearings in this suit or incidental thereto as between solicitor and client; And it is ordered that the said plaintiff do pay

the same to the said M. L.; And it is ordered that thereupon and upon the said M. L.'s doing what she is hereinbefore directed to do, the plaintiff's bill do stand dismissed out of this court as against the said defendant M. L.; And his Honor doth reserve the consideration as between the said plaintiff and the other defendants by whom so much of the costs hereby directed to be in the first place allowed and paid by the plaintiff to the defendant M. L. as is or shall be properly costs as between party and party in this cause, shall be ultimately borne, \*until after the said Master shall have made his report; And his Honor doth declare that the plaintiff ought to be considered as having a charge upon the several premises in the pleadings mentioned for the purpose of supplying the deficiency, if any, of the rent of £200 a-year to be reserved to him by the lease before mentioned, which was agreed to be granted to Thomas Willows, and also for the payment of an additional sum of £200 per annum during the term of forty-eight years and three quarters of a year wanting ten days mentioned in the deed-poll of the 26th November 1807, or until such time as the plaintiff's demands are satisfied, and to have a proper deed executed for that purpose, but such charge is not to take effect until it shall appear that the mortgage (for £3000) which was held by the defendant John Broom and the deceased Herbert Broom is satisfied, but in case it shall appear that such last-mentioned mortgage is satisfied, then It is ordered that the said Master do settle and approve of a proper deed for securing such two rents-charge accordingly; And in case it shall appear such last-mentioned mortgage is satisfied, then it is ordered that the said Master do compute interest upon the sum of £13,290 1s. 6d. from the 25th day of March 1809 according to the acknowledgment of the said Thomas Willows dated the 19th day of July 1810, after the rate of £5 per cent. per annum, and according to the agreement of the 27th June 1806; but in case it shall appear that such mortgage as last aforesaid is not satisfied, then it is ordered that such last-mentioned account be postponed until the further order of the court; And it is ordered that the said Master do take an account of what is due from the defendants J. Broom and John Harris or either of them or the estate of Herbert Broom deceased to the plaintiff in respect of the rent of £200 a-year from the 25th December 1807 according to the draft prepared by Mr. White, and according to the said agreement of the 27th June 1806, up to the date of the report to be made by the said Master; And it is ordered that the said Master do also take an account of what is due from the defendant J. Broom and John Harris or either of them or the estate of Herbert Broom deceased in respect of the rents reserved by the lease of the 2d day of August 1806, and the agreement of the 30th day of June 1808, and in respect of any other rents of the premises or any part thereof received by them or any or either of them or by any other person or persons by their or any or either of their order, or for their or any or either of their use; And it is ordered that the said Master do set an occupation rent on such part (if any) of the premises not included in such lease or agreement of which they or any or either of them shall have had a valuable occupation, or which would have produced rent but for their or his wilful default, and

to the plaintiff;

The Master to tax her costs of the suit and incidental to the different hearings as between solicitor and client

[ \*834 ]

ent the same to be paid by plaintiff and thereupon the bill to be dismissed as against her;

The consideration reserved by whom such part of the costs above directed to be paid by plaintiff, as shall be properly costs as between party and party in the cause, shall be ultimately borne.

Plaintiff declared to be entitled to a charge for supplying the deficiency of two yearly sums of 200*l.* to answer his demands, or until his demands are satisfied;

Such charge not to take effect until a prior mortgage is satisfied; if the same shall appear to be satisfied, the Master to settle a deed for securing the two rents-charge, and to compute interest upon the amount of the plaintiff's

demand according to certain instruments; but if not satisfied, such last-mentioned account to be postponed until further or-

[ \*835 ]  
der; an account to be taken of all rent due to the plaintiff from other defendants, and the estate of a deceased party, according to certain instruments, and in respect of any other rents received by them or for their use the Master to set an occupation rent upon such part of the premises not included in a lease and agreement, of which said defendants had a valuable occupation, or which would have produced rent but for their wilful default the amount to be found due on such accounts to be set off against the amount of principal and interest to be found due in respect of a mortgage vested in the defendants; An account to be taken of rent received by another defendant, the question as to his liability for any further rent reserved; The parties to be examined upon interrogatories, and to produce all deeds, papers, &c., the Master to make all just allowances, and to be at liberty to make separate reports, and to state special circumstances. Directions as to costs.

ascertain what is due in respect thereof; And it is ordered that what he shall find due on such several accounts or any of them be set against what he shall find due in respect of the principal and interest of the mortgage for £3000 which was vested in the defendant J. Broom and the said H. Broom deceased; And it is ordered that the said Master do ascertain and state whether after so doing any thing and what remains due upon such mortgage, or \*when by such means the same was paid off; And it is ordered that he do for such purpose take the account of principal and interest on such mortgage; And it is ordered that the Master do take an account of the rents and profits of the said premises or any of them received by the defendant R. Rosser or by his order or for his use under the deed of the 20th day of September 1806; And his Honor doth reserve the question whether he is liable for any and what further portion of the rents and profits of the said premises; And it is ordered that the Master do also take an account of what rents and profits of the premises or any of them were received by the defendant R. Rosser and the deceased R. S. White jointly or by their order or for their use, and what has become thereof; And for the better taking of the said accounts and discovery of the matters aforesaid, the parties are to be examined upon interrogatories, and to produce on oath before the said Master all deeds books papers and writings in their custody or power relating thereto as the said Master shall direct, who in taking of the said accounts is to make unto the parties all just allowances, and the said Master is to be at liberty to make a separate report or reports as to any of the matters hereby referred to him, and to state any special circumstances at the request of either of the parties as he shall think fit; And it is ordered that the plaintiff do pay unto the defendants E. Willows, Sarah M. Sankey, John Hanbury, and Daniel Sutton their costs of this suit to be taxed by the said Master in case the parties differ about the same, including the costs of all the former hearings; And it is ordered that thereupon the plaintiff's bill do stand dismissed out of this court as against the said four last named defendants; And his Honor doth reserve the consideration of all parties' costs so far as not hereinbefore provided for, and also the consideration of all further directions and of the subsequent costs of this suit until after the said Master shall have made his general report; And his Honor doth declare that the plaintiff in his costs is not to be allowed the costs of more than one hearing, and any of the parties are to be at liberty to apply to this court as there shall be occasion.

respect of a mortgage vested in the defendants; An account to be taken of rent received by another defendant, the question as to his liability for any further rent reserved; The parties to be examined upon interrogatories, and to produce all deeds, papers, &c., the Master to make all just allowances, and to be at liberty to make separate reports, and to state special circumstances. Directions as to costs.



*\*XIV. Decree declaring the legitimacy of the plaintiff, as the eldest surviving son of his father, as established by the verdict of a jury on the trial of an issue; also declaring certain agreements entered into by the plaintiff with a younger brother to be void, (the grounds on which such decree was founded being inserted in the decree,) and directing a reference to the Master to take an account of moneys paid by the plaintiff to the defendant, and to compute interest thereon, the amount to be paid into the bank subject to further order; decree made without prejudice to any claims which the defendant might establish against the plaintiff. (Gordon v. Gordon, 3 Swanst. 400, 478.)*

The decree stating that the cause now stood for judgment, and reciting the pleadings, and that the parties proceeded to a trial of the issue on the 27th February 1818, when the jury found that the plaintiff was and is the legitimate son of Colonel Harry Gordon, \*proceeds thus :—“His lordship doth declare that it is established by the verdict found in this matter that the plaintiff is the legitimate son of his father, and his Lordship doth declare that Peter Gordon his elder brother must also have been legitimate, and consequently that the defendant James Gordon was not the heir at law of Harry Gordon the elder, nor of the said Peter Gordon, and farther that it appears that if Peter Gordon was not legitimate, yet if having survived Harry Gordon the elder he became entitled in fee in law or equity to the estates in question by virtue of his father’s will mentioned in the agreement of 1790 to bear date the 5th day of August 1787, the defendant James Gordon could not be entitled at his father’s death or at the death of Peter Gordon to the estates of Harry Gordon the father as his heir at law, or have any well-founded claims to the said estates as such heir at law; that nevertheless the agreement of 1790 purports to be made between the plaintiff Harry Gordon and the defendant James Gordon claiming to be the heir at law of the said testator Harry Gordon the elder, and as such, making certain claims upon the estates therein mentioned, over and besides the provisions made for him by the will and codicil of 1776, 1782, and 1787, recited in the said agreement of 1790, and which will and codicil are thereby by the said plaintiff and defendant admitted to have been made by the said Harry Gordon the elder; that it further appears from the recitals of the said agreement of 1790, that if Peter Gordon had been illegitimate and Harry Gordon the younger also illegitimate, and if the estates were vested in Peter Gordon by virtue of the said will of 1787, the said James Gordon could not as heir at law of his father or otherwise by his contract or by any other his act authorize or give title to Harry Gordon the younger to enter upon the said estates or empower him effectually to require the mortgagees mentioned in the said agreement to reconvey to him the said Harry Gordon the younger upon payment of what was due to them, or vest in the said Harry Gordon the younger any interest in the said estates, save the said James Gordon’s interest as a lega-

[ \*836 ]

tee; that it also appears that the other agreement of the 4th day of February 1805, as well as the said agreement of 1790, was made between the parties thereto in consequence of the supposed illegitimacy of the plaintiff negatived by the before-mentioned verdict; and that the defendant, if the plaintiff was illegitimate, had no title to the lands in America, nor any right for his own behoof to hinder the plaintiff from obtaining possession thereof subject to the charges thereon, in case such lands under the grant thereof were vested in his father, and passed by his father's will to Peter Gordon; And his Lordship doth declare that if the plaintiff could not be relieved against the said agreements on the mere ground of mistake respecting his legitimacy, or on the ground that the said agreements were entered into in consequence of mistake and misapprehension respecting such legitimacy, yet that the plaintiff is entitled to be relieved against the same as having been also entered into under a misapprehension and misunderstanding that the said James Gordon the defendant had such right and interest in the said estate as would enable him effectually to give and assure to the plaintiff

[ \*837 ]

\*those benefits and interests which, for the considerations mentioned in the said agreements, are contracted or agreed to be given and assured to him by the said James Gordon; and inasmuch also as it is established by the evidence in the cause, that prior to the entering into the said agreement the defendant James Gordon had been informed and knew that a ceremony of marriage had previously taken place between his father and mother before the birth of the plaintiff (being the marriage which by the aforesaid verdict has been established as a valid marriage), and the said agreement having been entered into with such previous information on his part, and without such information being imparted to the plaintiff, who might, if the said James Gordon had communicated to him that information, have been able by due inquiry to prove his legitimacy as he has since proved the same after he had discovered that such ceremony had previously taken place; His Lordship doth therefore declare the agreements in the pleadings mentioned, bearing date the 30th day of March, 1790, and the 4th day of February 1805, to be void, and doth order and direct that the same be delivered up to be cancelled; And it is further ordered that it be referred to Mr. Dowdeswell to whom this cause stands referred, to take any account of all sums of money paid by the plaintiff to the said defendant James Gordon or to any other person or persons by his order or for his use in respect of the annuity mentioned in the agreement bearing date the 31st day of March 1790, and of the sums of 4600*l.* and interest and 1040*l.* in the said agreement also mentioned; And it is ordered that the said Master do compute interest on the respective sums paid by the plaintiff to the defendant James Gordon from the respective times of paying the same, and for the better taking the said account, &c.; And it is ordered that what the said Master shall find to be the amount of such sums and interest, be paid into the bank with the privy of the Accountant-General of this court on the credit of this cause, subject to the further order of this court; And his Lordship doth reserve the consideration of costs, &c.; And this

is to be without prejudice to any claims which the defendant James Gordon may have or can establish against the plaintiff in respect of the estate or effects of Harry Gordon the elder deceased or Peter Gordon deceased or either of them in any suit or proceedings which he may be advised to institute against him and other proper and necessary parties."—Reg. Lib. A. 1820, fol. 1984.

*\*XV. Decree for sale of an estate and payment of mortgagees and judgment creditors according to their priorities.*

It was declared that one account should be taken of what was due to the defendants the mortgagees for principal and interest on their respective mortgages, and to tax them their costs of this suit and at law; And that the Master should take an account of the rents and profits of the premises comprised in the defendants the Nicholl's mortgage which had been received by the said defendants \*or by their testator or any of them, or by any person by their or either of their order or for their or either of their use, or which without their or any of their wilful default might have been received; And that what should be coming on the account of the rents and profits should be deducted out of what should be found due to the said defendants the Nicholl's for principal interest and costs; And the Master was also to take an account of what was due for principal and interest to the several judgment creditors who were parties to the said suit, and also to the several judgment creditors of the defendant H., and all the said judgment creditors were to be at liberty to come before the said Master and prove their judgments; And the said Master was to cause an advertisement to be published in the London Gazette, and appoint a peremptory day for that purpose; And such of the said judgment creditors as should not come in by that time were to be excluded the benefit of the said decree; And the said Master was to state the priorities of the several mortgages incumbrances and judgments; And by consent of the defendant T. C. the only acting executor of J. C. esq. deceased another mortgagee, It was ordered that the estate in question should be sold with the approbation of the Master to the best purchaser that could be got for the same; and the money arising by the sale of the respective parts of the estate in question comprised in the mortgages and in the securities of such mortgages be applied in satisfaction of the money due on the respective mortgages according to their respective priorities; And that the money arising by the said sale should be applied in payment of the judgment creditors according to their respective priorities; And if there should be a surplus of the moneys arising by sale, it was ordered that the same should be paid to the defendant H. [*with the usual directions for taking the accounts.*]

One account to be taken of what was due to the mortgagees, the Master to tax their costs in equity and at law;

[ \*838 ]

An account to be taken of the rents received, or which but for wilful default might have been received by certain mortgagees; the amount thereof to be deducted from the amount to be found due for principal, interest, and costs;

An account to be taken of principal and interest due to the judgment creditors;

Judgment creditors to prove before the Master or to be excluded; The Master to ascertain the priorities of the mortgages, &c.

And by consent the estate in question to creditors ac-

be sold, and the purchase-moneys applied in payment of the mortgages and judgment according to their priorities; the surplus to be paid to the mortgagor.

XVI. *Form of a decree nisi where defendant makes default.*

This cause coming on, &c. in the presence of counsel learned for the plaintiff, no one appearing for the defendant, although he was duly served with a subpoena to hear judgment in this cause as by affidavit now produced and read appears, the substance of the plaintiff's bill appeared to be that, &c. Whereupon and upon hearing, &c. read, and what was alleged by the counsel for the plaintiff, His Lordship doth order and decree that, &c.; And this decree is to be binding on the defendant unless he, on being served with a subpoena to show cause against the same, shall at the return thereof show unto this court good cause to the contrary; but before the said defendant is to be admitted to show such cause, he is to pay unto the plaintiff his costs of this day's default in appearance to be taxed by the Master.

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[ \*839 ] \*XVII. *Minutes of a decree for a partition;—an infant defendant to have a day to show cause.*

Let a commission issue to commissioners to be therein named to make partition of the estate in question, who are to take the depositions of witnesses to be examined by them in writing and return the same with the said commission, and let the said estate be divided into moieties and set out in severalty, whereof declare one moiety to belong to Mr. N., and the other moiety to plaintiff Sir W. M., and let the respective parties convey their several moieties to each other to hold in severalty according to the respective undivided moieties thereof, and let the Master settle the conveyances in case the parties differ about the same; And until such conveyances shall be made let the several parties generally hold and enjoy their respective divided moieties against each other or any claiming under them; And let the defendant Miss N. an infant execute the conveyance before directed to be executed by her, unless she on being served with a subpoena, shall within ——— months after she shall attain her age of twenty-one years show unto the court good cause to the contrary.

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XVIII. *Minutes of a decree for a partition of an advowson in moieties, the bill being dismissed as to one defendant with costs.*

Declare that plaintiff is entitled to have a partition of the advowson of the vicarage of the parish church of W. in K. into moieties, to present by alternate turns, and decree that a partition be accordingly made thereof in moieties between plaintiff and defendant E. S. devisee in the will of J. S.; And for making such partition the

plaintiff and defendant E. S. are mutually to execute conveyances to each other, so that plaintiff may hold one moiety of the advowson to him and his heirs, and defendant E. S. may hold the other moiety to her and her heirs, as tenants in common in severalty respectively; And in such conveyance let a clause be inserted that the plaintiff and his heirs and defendant E. S. and her heirs shall present to the said vicarage by alternate turns, and if the parties differ the Master is to settle the conveyances, and the charges of the conveyances are to be borne equally between the plaintiff and defendant E. S.; And it appearing in the cause that J. S. under whom defendant E. S. claims hath since the agreement for the partition or division of the premises presented upon the last avoidance, It is ordered and decreed that the plaintiff do present on the next avoidance being the first turn from this time; And it is further ordered that the plaintiff's bill as against the defendant the heir at law of the said J. S. be dismissed out of this court with costs according to the order of the court, but his Lordship does not think fit to give any costs as between the plaintiff and the defendant E. S.

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**\*\*XIX.** *Order for liberty to apply to the Court of King's Bench for payment to the plaintiff and defendants of money paid into the hands of the Master of that court, the amount to be paid into the bank to abide the event of the cause. (Hawkshaw v. Parkins, 2 Swanst. 539, 550.)* [ \*840 ]

His Lordshp doth order that the plaintiff be at liberty to make an application to the Court of King's Bench for payment to him and to the defendants of the money paid by the plaintiff into the hands of the Master of the said Court of King's Bench pursuant to the order of Mr. Justice Bayley on the 23d day of June 1818, and it is ordered that they do pay the same when so received, to be verified by affidavit, into the bank with the privity of the Accountant-General of this court on the credit of this cause to abide the event of this cause, but this order is to be without prejudice to the right of any of the parties to such money or any of the questions in this cause.—Reg. Lib. A. 1818, fol. 1281.

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**XX.** *Direction to a Master to appoint a receiver for one moiety of the estates in question, the receiver to be at liberty to let the estates with the approbation of the Master.*

And the said Master is to appoint a receiver for one moiety of the estates in question and allow him a reasonable salary for his care and pains therein, such person to be appointed receiver first giving security to be allowed of by the Master, and to be taken be-

fore a Master Extraordinary in Chancery in the country if there shall be occasion, duly and annually to account for and to pay what he shall so receive as the court shall direct, and the tenants of the said estates are to pay their rents in arrear and growing rents to such receiver, who is to be at liberty to let and set the said estates from time to time with the approbation of the said Master as there shall be occasion, and the said receiver is to pay the balance of his accounts from time to time into the bank subject to the further order of the court.

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XXI. *Minutes of an order directing a consignee of an estate in the West Indies (being appointed by the Master pursuant to the decree) to transmit his accounts half-yearly of the produce consigned to him, also to make insurances on the consignments, also to transmit stores and effects for the use of the estate; the defendant to deliver over an inventory of the negroes, &c. on the estate, and the consignee to remit to him such sums as should be laid out in negroes and repairs; the consignee to pass his accounts annually and to pay the balance due into the bank.*

#### OUTLINE OF THE CASE.

[ \*841 ] R. C. by will devised a plantation at St. C. to his eldest son D. for life with limitations to other children, and directed that the clear \*produce of his plantation till his debts and legacies should be paid, be from time to time shipped in such ships as defendant C. his heirs and assigns should direct, and consigned to him, and that his son should send an account every year of the produce, and if he did not, then defendant C. with the consent of his trustees was to put an overseer on the estate.

The bill was brought against the trustees and sons for an account of the rents and profits, and that an overseer or receiver might be appointed of the estate.

The decree referred it to the Master to appoint a proper person in L. to whom the defendant C. should consign and send over the profits of the plantation and houses in question to be disposed of according to testator's will, and defendant C. was accordingly from time to time to consign and send over the profits to such person so to be appointed, and R. S. was appointed consignee.

#### ORDER.

Let R. S., the consignee approved by the Master, twice in every year transmit to defendant C. a true account of the sugars and other produce of the plantation consigned to and received by him upon the respective consignments, and of the sales thereof, and let the said R. S. make insurances upon the sugars and other produce of the plantation that shall be consigned to him in such manner as shall be reasonable with the approbation of defendant D. C. or of such person

as he shall appoint, and let the charges thereof be paid out of the money arising by the sale, and let the said R. S. transmit over from the said plantation to D. C.'s attorney at St. C. such stores provisions and other effects for the necessary use and consumption of the said estate as the said R. C. shall by letter from time to time desire with the approbation of the Master, and let defendant C. deliver over to the said R. S. an inventory of the negroes mills and utensils now upon the plantation, and let the said R. S. pay or remit to the said R. C. such sums of money as shall be reasonably laid out by the said C. in negroes utensils cattle and repairs upon the plantation, to be ascertained by an account to be sent from time to time by the said C. to be verified by affidavit, which sums are to be settled by the Master if the parties differ; And let the said R. S. pass his accounts annually before the Master, and pay what shall appear to be due from him on the balance of his account from time to time into the bank with the privity of the said Accountant-General of this court, &c.

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XXII. *Minutes of an order directing the appointment of persons to manage an infant's estates in the West Indies, with directions as to remitting the rents and produce; also directing the appointment of a guardian for the infant.*

Let it be referred to the Master to approve of a proper person in the island of B. to manage the plaintiff's the infant's estate there, and \*receive the rents and profits thereof, and to remit same over to defendants in E. in trust for plaintiff; and what shall be from time to time so remitted by such person so to be approved of as aforesaid to defendant is, after a deduction of what shall be allowed for plaintiff's maintenance, to be placed out at interest, &c.

[ \*842 ]

Let it be referred to the Master to approve of a proper person to be appointed guardian of the person and estate of plaintiff E. O. the infant, and he is to state same to the court, and thereupon such further order shall be made relating thereto as shall be just.

And let the Master appoint one or more proper person or persons in the island of B. to manage said plaintiff's the infant's estate there, and to receive the rents and profits thereof, and he or they is or are to remit same to a proper person in L. to be approved of by the Master for that purpose; and the said Master is to make such person to whom the same shall be so remitted a reasonable allowance in respect thereof; but such person is first to give security to be approved of by the Master duly to account for and pay what he shall so receive by such remittance as this court shall direct.

*\*XXIII. Decretal order under the stat. 7 Geo. 2, c. 20, upon a petition for redemption of a mortgage, presented by the party entitled to the equity of redemption, defendant to a bill of foreclosure.(1)*

At the Rolls.  
Master of the Rolls.

Wednesday the 6th day of August, &c. 1794.

Between Richard Huson, . . Plaintiff,  
and  
Jane Hewson, . . Defendant.

Recital of the defendant's petition praying a reference to the Master to take an account of the principal and interest due to the plaintiff, and for costs at law and in equity, and upon payment thereof that the plaintiff might reconvey the premises and deliver up all deeds,  
[ \*843 ]  
praying also for an injunction to restrain the plaintiff's proceedings in ejectment;

Whereas Jane Hewson widow did on the 25th day of July last prefer her petition unto the Right Honorable the Master of the Rolls, setting forth that by indentures of bargain and sale dated the 14th day of May 1759 and made between J. H. the petitioner's late husband (in right of the petitioner) the petitioner and M. S. of the one part, and Thomas Gibson of the other part, the said J. H. and the petitioner in consideration of £200 paid to them by the said T. G. did grant and surrender to the said T. G. a messuage or tenement by way of mortgage for securing £200 and interest; that plaintiff has become assignee of the said mortgage, and that the petitioner is entitled to the equity of redemption, and is willing and desirous to redeem the said mortgaged premises, and to pay the plaintiff R. H. all principal money and interest due on the said mortgaged premises, and has applied to the said R. H. and offered to pay the same; that the said plaintiff R. H. notwithstanding in \*Easter Term last and subsequent to such offer filed his bill in this cause to foreclose the said mortgaged premises, to which the petitioner has appeared and obtained an order for time to answer; and in the same Term the said R. H. served the tenant in possession of the said mortgaged premises with a declaration in ejectment to which petitioner has appeared and entered the common rule, and praying that it might be referred to the Master of this court to take an account of the money due to the plaintiff for principal and interest and for costs as well at law as in this court; and that upon payment by the petitioner of what shall be found due upon such account the plaintiff might re-convey the said mortgaged premises to the use of the petitioner her heirs and assigns forever, and might deliver up to the petitioner all deeds and writings in his custody or power relating to the same, and that in the mean time the plaintiff might be restrained from proceeding in this cause and in the aforesaid ejectment and from all other proceedings at law against the petitioner in respect of the matters aforesaid; Whereupon all parties concerned were ordered to attend his Honor in the matter of the said petition this day, and counsel for the petitioner and for the plaintiff this day attending accordingly,

(1) See *Huson v. Hewson*, 4 Ves. 104, 2d edit., and the cases referred to in note (57), *ibid.*; 2 Madd. Ch. Pr. 265, 428; *Pread v. Hull*, 1 Sim. & Stu. 331.



upon hearing the said petition and the said indenture dated the 14th day of May 1759 read, and what was alleged by the counsel for the petitioner and for the plaintiff, and the defendant by her counsel admitting the mortgage in the pleadings mentioned, and that the principal money and interest secured thereby are still due to the plaintiff, and now offering to pay the same to the plaintiff, together with his costs in this court and at law pursuant to the late act of parliament in that case made and provided, His Honor doth order and decree that it be referred to Mr. H. one of the Masters of this court to take an account of what is due to the plaintiff for principal and interest on the mortgage in the pleadings mentioned, and to tax him his costs in this court and at law; and upon the defendant's paying unto the plaintiff what shall be reported due to him for principal and interest and costs as aforesaid within six months after the said Master shall appoint, It is ordered that the plaintiff do surrender the said mortgaged premises free and clear of and from all incumbrances done by him or any claiming by from or under him, and deliver up all deeds and writings in his custody or power relating thereto upon oath to the said defendant or to whom she shall appoint; but in default of defendant's paying unto the said plaintiff such principal interest and costs as aforesaid by the time aforesaid, the said defendant is from thenceforth to stand absolutely debarred and foreclosed of and from all right title interest and equity of redemption of in and to the said mortgaged premises; and for the better taking of the said accounts the parties are to produce before the Master upon oath all deeds papers and writings in their custody or power relating thereto, and are to be examined upon interrogatories as the said Master shall direct, who in taking of the said account is to make unto the parties all just allowances, and any of the parties are to be at liberty to apply to the court as there shall be occasion.

Decretal order directing a reference to the Master to take an account of principal and interest due, and to tax the plaintiff's costs at law and in equity, and upon payment of the amount reported due within six months after the report, plaintiff to surrender the premises to the defendant, and deliver up all deeds, &c. But in default of payment defendant to be foreclosed; Parties to produce all deeds, &c. Master to make the parties all just allowances.

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XXVI. *Order directing an action of trover to be brought, and that the defendant should make certain admissions.* [ \*844 ]

Doth decree that the parties do proceed to a trial at law in the Court of King's Bench in London, at the Sittings in the next Term or at such other time as the Lord Chief Justice of that court shall appoint, in an action of trover to be brought by plaintiff against the defendant T. or — packs of woollens in question in this cause, and the said W. T. is to name an attorney and appear and accept a declaration and plead the general issue; and in order that the property of said goods may be tried on such trial, said defendant is to admit that the goods in question came to his hands, and also to admit a demand and refusal;

And it is further ordered that all proceedings under the said commission and all other books, &c. be produced, &c. on or before — next as said Master shall direct, and either side is to be at liberty to

take copies thereof at their own expense ; and it is ordered that such copies thereof be produced at the trial as either side desire, and give notice thereof in writing.

Further consideration reserved till after trial.

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XXVII. *Minutes of an order directing a trial at law in ejectment.*

Let all parties proceed to a trial at law at the next — assizes for the county of S. in an ejectment upon the demise of the now plaintiff, and defendants to name an attorney to appear to the ejectment, and to enter into the common rule to confess lease entry and ouster ;

And let the original lease, &c. all deeds, &c. be produced, and reserve all, &c.

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XXVIII. *Minutes of an order directing a trial at law, to ascertain whether and when a person became bankrupt.*

Let the parties proceed to a trial at law upon this issue, *whether M. P. did on or before — commit any act of bankruptcy within the intent and meaning of the several statutes relating to bankrupts, or any of them*, and if the jury shall find he did not commit any act of bankruptcy on or before that day and that he committed an act of bankruptcy at any time afterwards, in such case the particular time when he committed such act of bankruptcy, is to be indorsed on the *postea*.

And plaintiff here is to be plaintiff at law, &c. &c.

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[ \*845 ] \*XXIX. *Order directing a trial at law upon certain issues, with directions in case the jury should find any particular right varying in circumstances from the issues as laid.*

Doth order that the parties do proceed to a trial at law at the next — assizes for the county of Y. upon the following issues, whether, &c.

And it is further ordered that plaintiff the mayor and commonalty of the city of Y. be plaintiff at law, and it is hereby referred to Mr. —, &c. to settle the issues in case the parties differ about the same ; And to the end such trial may be had, defendants are forthwith to name an attorney to accept a declaration and appear and plead to issue ;

And in case on said trial the jury shall find any particular right though varying in some circumstances from the issues as laid, it is ordered that the same be indorsed on the *postea*.

Further directions reserved, &c. ; liberty for either party to apply.

XXX. *Minutes of an order directing a trial at bar in the Court of King's Bench by a special jury, six of whom to have a view of the premises.*

Let plaintiff P. and defendants proceed to a trial at bar in the Court of King's Bench next — Term or at such time as that court shall think fit, by a special jury of the county of S. on this issue whether, &c.

And the sheriff of the county of S. is to attend the Master with his book of freeholders, whereout the names of forty-eight persons are to be taken, and each is to be at liberty to strike out twelve and the remaining twenty-four are to stand and be returned on the jury, and six of the jury are to have a view of the premises;

And the plaintiff P. is to be plaintiff at law, and the Master is to settle the issue if the parties differ;

And to the end said trial may be had, defendants are forthwith to name an attorney to accept a declaration to appear and plead to issue;

And let both sides produce before the Master all deeds, &c., and either side is to be at liberty to inspect and take copies thereof at their own expense, and such of them as either side shall give notice for are to be produced at said trial; And after said trial shall be had, either party is to be at liberty to apply to the court for further directions.

XXXI. *Order directing issues to be taken pro confesso, unless the plaintiffs proceed to trial within a limited time.*

Upon opening, &c. unless the plaintiffs in the issues do proceed to the trial thereof some time in —, it is ordered that the said \*issues be taken *pro confesso* as if the same had been tried and found against them, without further motion.

[ \*846 ]

XXXII. *Minutes of an order directing the plaintiff's bill to be retained for a limited period, with liberty to him to bring an action at law, and in default thereof within the time limited, the bill to stand dismissed with costs.*

Let the plaintiff's bill be retained for — months, and in the mean time plaintiff is to be at liberty to bring his action against defendant for what is due to him for the matters complained of in bill, and the same is to be tried at the next assizes for the county of S.;

And both sides are to produce before Mr. S. one, &c. upon oath

all books, &c. on or before, &c. ; either side to take copies, &c. ; and such of them as either side shall give notice for are to be produced at said trial ;

And in default of plaintiff's bringing such action and proceeding to trial by the time aforesaid, then it is ordered that plaintiff's bill do stand dismissed out of this court with costs to be taxed by said Master ;

But in case plaintiff shall bring such action and proceed to trial as aforesaid, then the court will reserve the consideration of all further directions, &c.

**XXXIII.** *Order declaring an account to have been forged, and recommending a prosecution for forgery.*

His Lordship declared he was of opinion that the account produced before him dated, &c. is a forged account, and recommended it to plaintiff to prosecute said defendant for forging said account or publishing same knowing it to be forged.

And said account being filed in the office of the Register for filing affidavits in this court annexed to the affidavit made by said J. H., it is ordered that same be carefully preserved in the affidavit office, to the end it may be forthcoming in case any prosecution shall be carried on against the said defendant or any other person for forging the same.

And that the proper officer in the said office do attend with the said account on any trial to be had for such forgery, being paid his fees for such attendance.

[ \*847 ] **\*\*XXXIV.** *Decree by the Lord Chancellor reversing an order of dismissal made by the Master of the Rolls, and directing inquiries as to the application of certain trust-moneys and the acts of the trustees thereof relative thereto, and in case the Master should find that either of the trustees had committed a breach of trust, then the Master to state in what such breach of trust took place, and whether the cestui que trust knew of the trustees' liability in respect of such breach of trust previously to her executing a power of attorney.* ( *Walker v. Symonds*, 3 *Swanst.* p. 2, 44.)

[ *The decree on further directions is inserted postea*, p. 848. ]

That the order of dismissal made on the hearing of this cause be reversed, and that it be referred to Mr. Thompson one, &c. to inquire and report in whose hands the trust-money mentioned in the pleadings had been since the year 1782, and when the same should appear to have been placed out on any security or securities, to report on what security or securities the same was placed out ; And it was ordered that the Master should state specially and particularly the

nature of such security or securities when the same were not government or real securities, and also report in whose custody possession order or disposal the instruments of security were from time to time, and that the Master should also inquire and report what were the acts of each of the trustees respectively as to the receipt and placing out of the trust-money from time to time and the possession of the securities for the same; And it was ordered that such inquiry should be made not only as to the acts of the trustees respectively, but as to the consent permission or privity of each of the trustees respectively to any act of the others or other of them; And that the Master should inquire and report whether the trust-money was at any time and for what time in the hands of any of the trustees without security, and whether the same was so with the consent privity or permission of the others or other of them, and in case upon such inquiries it should appear to the Master that the defendant William Symonds deceased or Thomas Griffith by any act neglect or default committed any breach of trust in respect of which they or either of them were or was answerable personally for the trust-money or any part thereof, that the Master should state in what such breach of trust took place; And it was ordered that the Master should inquire and report whether the plaintiff Loveday previously to her executing the power of Attorney in the pleadings mentioned had any knowledge or notice that by reason of such breach of trust they or either of them were or was so answerable; and it was ordered that the Master should state all special circumstances; And for the better discovery of the matters the parties were to be examined upon interrogatories, &c., and his lordship reserved the consideration of costs and of all further directions until after the Master should have made his report, and any of the parties were to be at liberty to apply to the court as they should be advised.—Reg. Lib. B. 1811, fol. 1211.

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\*XXXV. *Decree on further directions, overruling exceptions which had been taken to the Master's report, and declaring that the assets of two deceased trustees were liable to make good a breach of trust by the decree declared to have been committed by the deceased trustees, reserving liberty to their representatives to use the names of the plaintiffs in any proceedings which they might be advised to take against other persons upon giving an indemnity to the plaintiffs to be settled by the Master; an account directed to be taken of principal and interest due in respect of the trust-money, and of the plaintiffs' costs, the same to be paid out of the assets of the two deceased trustees;—the bill dismissed as against one defendant without costs, but without prejudice to any ulterior proceedings. (See the preceding decree, and 3 Swanst. p. 79.)* [ \*848 ]

The decree ordered that the exceptions be overruled as insufficient, and that the sum of 5*l.* deposited with the register, &c. be paid to the plaintiffs, and his Lordship declared that the late defendant William

Symonds and Thomas Griffith were proved to have committed a breach of trust in respect of which they were answerable personally for the trust-money in question, and that under all the circumstances of the case the plaintiff Loveday Walker ought not to be considered as having relinquished or barred herself from the right to consider them as being so answerable for the said breach of trust, or as having bound herself to accept such provision only in respect of the trust-money as she or William Symonds and Thomas Griffith were or might be entitled to under the trusts of the indentures of lease and release of the 24th and 25th days of March 1797, but that under such circumstances either the plaintiff Loveday Walker under the true construction of the said indentures remained entitled to charge William Symonds and Thomas Griffith personally, or if she was not so entitled under such construction she was not bound to take the benefit of such provisions and relinquish her demands against them personally on account of such breach of trust; And his Lordship declared that William Symonds and Thomas Griffith having made themselves by having executed the said indentures of release and other acts creditors of the defendant Isaac Harris, as in the said indenture of release is mentioned, and the plaintiff Loveday Walker, not having been bound to accept the benefit of their demands as such creditors, the plaintiffs were entitled to have such payment made out of and such account directed as thereafter was ordered and directed as to the assets of William Symonds and Thomas Griffith respectively, without compelling an account to be taken of the assets of Nicholas Donnithorne deceased, which appear to be included in the trusts of the said indenture of release, or enforcing in the said suit any demand which by the plaintiffs or on their behalf could be enforced under the trusts of that indenture, but with such liberty reserved to the respective representatives of William Symonds and Thomas Griffith as thereafter provided; and it was ordered that it be referred to the Master to take an account of what remained due to the plaintiffs for principal and interest of the trust-money in question, and that the defendants \*William Symonds and Thomas Cooke out of the assets of the late defendant William Symonds deceased, and the defendant John Lilly out of the assets of Thomas Griffith pay what the Master should find to remain due for principal and interest on taking the said account, into the bank with the privity of the Accountant-General, to be there placed to the credit of the cause, "The plaintiffs' account," subject to the further order of the court, and the plaintiffs were to be at liberty to make such application to the court touching the same as they should be advised; And in case the defendants William Symonds and Thomas Cooke should not admit assets of William Symonds deceased sufficient for the purpose aforesaid, then they were to come to an account before the Master for his personal estate come to their or either of their hands, &c. and unless the defendant John Lilly should admit assets of Thomas Griffith, It was ordered that the Master do take an account of his personal estate come to the hands of John Lilly his executor, &c.; And his Lordship declared that in case after having satisfied what they were liable to pay under the directions thereinbefore contained, the defendants William Symonds and

[ \*849 ]

Thomas Cooke and John Lilly as such representatives respectively as aforesaid or any representative of Symonds or Griffith respectively should be advised to make any claim or demand against the assets of Nicholas Donnithorne deceased, or against the trust-premises or the trustees in the said indenture of release contained and named, or against the defendant Isaac Harris, which it should be necessary or they should be advised to make in the names of the plaintiffs or any of them, they were to be at liberty to use the names of the plaintiffs or any of them in any such proceedings, they giving to the plaintiffs a proper and sufficient indemnity against the costs and expenses of all such proceedings: And it was ordered that such indemnity be settled by the Master if the parties differ about the same; And it was ordered that it be referred to the Master to tax the costs of the plaintiffs, and that such costs when taxed be paid by the defendants the executors out of the assets of respective testators; And it was ordered that the plaintiffs' bill as against the defendant Harris be dismissed without costs between the plaintiffs and him, but such dismissal was to be without prejudice to any such proceedings as aforesaid for the benefit of the representatives of the other deceased trustees, either in their own names or those of the plaintiffs or any of them thereafter to be taken relative to the matters in question; And for the better taking of the said accounts the parties were to produce before the Master all books, &c.; and the Master was to be at liberty to make a separate report or separate reports of any of the matters aforesaid; And his Lordship reserved the consideration of all further directions until after the Master should have made his report, and any of the parties were to be at liberty to apply to the court as there should be occasion.—Reg. Lib. B. 1817, fol. 1977.

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**\*\*XXXVI.** *Decree for an account of a testator's personal estate and the annuities and legacies given by his will; the will not being duly executed; the real estate declared to have descended to the testator's daughter and heiress at law a plaintiff, and to be subject to the articles entered into upon her marriage; an annuity in fee granted by King Charles the Second out of the Barbadoes Duties decreed to have become vested under the will in the testator's daughter as a fee-simple conditional, to be subject to make good the annuities and legacies given by his will in case the personal estate should be deficient. Liberty reserved to the executor to make his election between a debt claimed to be due to him, and a legacy given to him by the will. (Earl of Stafford v. Buckley, 2 Ves. sen. 170.)*

[ \*850 ]

Decree that it be referred to the Master to take an account of the personal estate of the testator Richard Cantillon deceased which has been received by the plaintiffs the Earl and Countess of Stafford and the defendant F. Garvan or any of them or by any other person by their or any of their order or for their or any of their use; Let the

An account to be taken of the personal estate possessed by the plaintiffs and de-

defendant, also of the testator's debts, funeral expenses, annuities, and legacies; the Master to compute interest on such legacies as carry interest; accounts stated by the executor during the plaintiff's minority not to be unravelled; the executor declared not entitled to claim both his debt and legacy, liberty reserved to him to make his election; directions reserved as to any account of what was due from the testator to his executor;

[ \*851 ] the residuary personal estate to be ascertained; certain annuities declared to be given for life, and others so long as the annuitants have issue of their bodies; the Master to set apart sufficient estate to secure the growing payments, the personal estate to be considered as liable in the first place;

Master likewise take an account of the said testator's debts and funeral expenses, and of the annuities and other legacies given by the will, and what is due for the arrears of such annuities; And let the Master compute interest on such of the legacies as carry interest from the end of one year from the said testator's death at the rate of 4 per cent.; And let such personal estate be applied in payment of the said testator's debts funeral expenses annuities and other legacies in a course of administration; And in taking of the accounts of the said testator's personal estate against the said defendant F. G. in case the Master shall find any account stated between him and the administrators during the minority of the plaintiff the Countess of S., (2) he is not to unravel the same; And it being insisted in the cause that there was a debt due from the testator at the time of his death to the said defendant F. G., declare that the said defendant is not entitled to claim both his debt and his legacy given him by the will of the said testator in this cause, but that he has a right to make his election whether he will claim his debt out of the testator's estate or accept the legacy given him by the will after the account of his personal estate shall be taken; And reserve liberty to the said defendant F. G. to make such election after such account shall be taken; And also reserve any directions as to any account of what was due from the said testator at the time of his death to the said defendant F. G. until after such election shall be made; And let the Master state and ascertain what shall appear to be the clear surplus of the said testator's personal estate after payment of his debts funeral expenses annuities and other legacies as aforesaid; And as to the annuities given by the testator's will, declare that the annuities given \*to his brothers T. C. and B. C. are annuities for life only, redeemable in the manner mentioned in his will, and that the annuities given to the other annuitants are to continue so long as they have issue of their bodies, redeemable in the manner mentioned in the said testator's will; And let the Master consider of a proper part of the said testator's estate to be set apart to secure the growing payments of the said annuities, to which the personal estate is to be considered as liable in the first place; And let the Master state the same unto the court, whereupon such further order shall be made as shall be just; And several questions arising in the cause touching the extent and construction of that clause in the testator's will whereby he has directed the trustees to entail upon his daughter and her issue all his estate and effects after the payment of the jointures to his wife and of his annuities and legacies, with such limitation as therein mentioned, declare that the said testator's will not being executed according to the statute against frauds and perjuries, the testator's real estate in the county of L. is not comprised in or affected thereby, but is descended to the plaintiff the Countess of S. his daughter and heiress at law; But declare that the testator's annuity of 1000*l.* per annum, which was originally created

(2) The executors Garvan and Stoper had renounced probate, and letters of administration with the will annexed were granted during the minority of the testator's daughter, and for her benefit, to the testator's widow, who had intermarried with F. Bulkeley.



by grant of King Charles the Second to the Earl of Kinnoul in fee, and also the surplus of testator's personal estate arising at the time of his death are subject to the power thereby given to his executors; And declare that the said annuity of 1000*l.* per annum in fee being capable of being settled and limited to the testator's daughter and the heirs of her body, the same did by virtue of his will vest in her in equity as a fee-simple conditional, and that she having had issue is capable of aliening or settling the same; And declare that according to the true construction of the said clause in the will, the limitation over of the residue of the testator's personal estate to his two nephews the defendants B. C. and T. C. is too remote and void; And declare also that the said annuity of 1000*l.* per annum subject to make good the annuities and legacies given by the said testator's will in case his personal estate shall be deficient for that purpose, and also the said real estate in the city of L. are subject to and affected by the articles dated the 6th of July 1743 entered into upon the plaintiff's marriage; And declare that the interest and profits of the surplus of the testator's personal estate over and above the 200*l.* a-year given for the maintenance of the plaintiff the Countess of S. accrued before her marriage (if any shall be) did by virtue of the said will go to and belong to the plaintiff the Countess of S.; And declare that the articles ought to be performed and carried into execution, and decree the same accordingly, and let proper settlements conveyances and assurances be executed by the respective parties to the said articles, so far as the deaths of parties will admit thereof, with the approbation of the Master, except so far as the said articles relate to any surplus of the testator's personal estate existing at the time of his death which shall remain after payment of his debts funeral expenses annuities and legacies, touching which surplus his Lordship doth reserve any directions till after the said account shall be taken \*and the Master shall have made his report; Let the Master also take an account of the income of the said annuity of 1000*l.* a-year which has been received by the defendant E. or by any other person by his order or for his use; And in taking of the said account let the Master make unto the said defendant all just allowances; And it being admitted by the said defendant E. that he has in his hands the sum of 6000*l.* part of the money arising out of that annuity, let the said defendant E. pay the said sum of 6000*l.* into the bank with the privity of the said Accountant-General of this court to be placed to the credit of this cause, subject to the further order of this court; And the defendant S. W. being the heir at law of her father who was the trustee of the testator's real estate in the county of L., desiring to be discharged from the trusts, let her convey the same to a new trustee to be approved by the Master, at the plaintiffs' expense, subject to the trusts and provisions of the said marriage articles; And it being admitted that the defendant G. entered into security to the Bank of England for the benefit of the testator's estate in respect of certain bank notes burnt in his house, let the said defendant G. be indemnified in respect of such security given by him out of the testator's estate; And let the Master be at liberty to make separate

the real estate declared to have descended to the feme plaintiff as heiress at law;

Construction of the bequest of an annuity of 1000*l.* issuing out of the Barbadoes duties, as vesting in her in equity as a fee-simple conditional; the limitation over to the nephews of the residuary personal estate declared to be too remote; the 1000*l.* annuity and the real estate declared to be subject to the articles executed upon the plaintiffs' marriage; the income of the residuary personal estate after payment

[ \*852 ]

of the allowance for maintenance declared to belong to the feme plaintiff; her marriage articles decreed to be performed; further directions reserved as to the residuary personal estate;

An account to be taken of the arrears of the 1000*l.* annuity received by one of the defendants, the balance admitted to be in his hands di-

rected to be paid into court; the heir at law of a deceased trustee desiring to be discharged directed to convey the real estate to a new trustee; the executor having indemnified the bank against certain notes burnt, directed to be indemnified out of the testator's estate; The Master to make separate reports; all parties to produce books, &c. costs to be paid out of the estate; subsequent costs, and all further directions reserved.

reports as to the account hereby directed against the defendant E., and as to the account of what is due to the annuitants for the arrears of their several annuities, and as to any fund to be set apart for securing the said annuities; [And for the better clearing of the several accounts before directed, the usual directions given for production of books and papers, and examination of the parties; the costs of all parties out of the testator's estate; The consideration of subsequent costs and of all further directions, and particularly as to any question that may arise between the interest which the Countess of S. may take and the interest which any child or children she hath had or may have may take in the surplus of the said testator's personal estate reserved until after the Master shall have made his report; Liberty to any of the parties to apply, &c.]

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\*XXXVII. *Decree establishing a will with several codicils thereto, and directing the trusts to be carried into execution, except as to a direction in the will for the accumulation of the interest and dividends of the residuary personal estate and the rents of the real estate during the minority of any person or persons entitled thereto, which is declared to be too remote and void; a grandson of the testator, an infant, declared to be entitled to the devised estates for life, with remainder to his first and other sons in tail general; directions given as to an allowance for his maintenance; the testator's widow having made her election to take under the marriage settlement, declared to be barred of her dower; a trustee declared to be entitled to certain leasehold premises for his own benefit, and special directions given as to prospective and retrospective allowance to be made to him for his trouble. Marshall v. Holloway, 2 Swanst. 432, 450.)*

[ \*853 ] April 22, 1820.—His lordship doth declare that the will of Thomas \*Holloway the testator, &c. dated, &c. and the three several codicils of the testator dated, &c. are respectively well executed and proved, and that the trusts thereof ought to be carried into execution, except in so far as the said will directs the laying out and investing the dividends interest and annual proceeds of the stocks and securities in and by the said will directed to be purchased with the surplus of the said testator's personal estate after the payment of his debts funeral and testamentary expenses and legacies, and the rest of his personal estate, and also the clear yearly rents and profits of his real estates from time to time, and when and so often and during all such times as any person or persons beneficially interested in or entitled to his real or personal estates under the trusts therein-after declared thereof should be under the age of twenty-one years, and the adding all such investments to his personal estate in order

to accumulate the same; And his lordship doth declare that such direction to lay out and accumulate the said rents and profits interest and dividends is too remote and void in law; And his Lordship doth declare that the defendant the infant H. F. K. Martelli is entitled in possession to the rents and profits of the said testator's freehold and copyhold and leasehold estates, and to the dividends interest and annual proceeds of his personal estate and effects for and during the term of his natural life, with remainder to the first and other sons of his body lawfully to be begotten successively, according to seniority of age, and the heirs of their bodies respectively, with such remainders over as in the said will and codicils in that behalf respectively contained.—The decree after the usual directions for an account of the personal estate of the testator and the rents and profits of his real estates received by the plaintiffs, proceeded thus:—

It appearing that the defendant Horatio Martelli the father of the said defendants the infants, is dead, it is ordered that the said Master do inquire and state to the court by whom the said defendant the infant H. F. K. Martelli has been maintained since the decease of the said testator, and what sums of money have been paid in respect thereof and by whom, and what will be proper to be allowed for his maintenance and education for the time past, and to whom, and also what will be proper to be allowed for his maintenance and education, and out of what fund for the time to come, and to whom, and in making such allowance the said Master is to have regard to the situation and circumstances of the other defendants the younger brothers and sisters of the said H. F. K. Martelli, and the said Master is to be at liberty to make separate report, &c.; And the defendant Ann Holloway having elected to take the provision made for her by the indenture of settlement in the pleadings in this cause mentioned to bear date the 17th day of November 1798, in lieu of her dower thirds and free-bench in and out of the said testator's freehold and copyhold estates, his Lordship doth declare that the said defendant Ann Holloway is barred of all claim in respect of such dower or thirds and free-bench, and doth order that the said defendant do execute a proper and sufficient \*release of such claims, such release to be settled by the said Master; And it is ordered that all the costs charges and expenses attending the making and executing thereof be paid and discharged by the said plaintiff out of the personal estate and effects of the said testator, &c.; And his Lordship doth declare that the said defendant Faithful Croft is entitled to the leasehold house and premises in Chancery Lane given and bequeathed to him in and by the codicil of the said testator bearing date the 20th day of January 1816, for the remainder of the term of years now to come therein, from the death of the said testator, for his own use and benefit; And it being alleged by the said plaintiffs the trustees that the nature and circumstances of the estate of the said testator require the application of a great proportion of time by and on the part of the said trustees for the due execution of the trusts of his said will in regard to his estate, and that they cannot undertake to continue the execution of the trusts without the aid and assistance of the said Faithful Croft as a co-trustee, he having during the life of the said

An inquiry directed as to the persons by whom the infant has been maintained since the testator's death, the sums paid on account thereof, and what allowance is proper to be made for the time past and to come, the Master to make a separate report.

The widow having elected to take under the settlement, declared to be barred of her dower;

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A proper release to be executed by her, the costs thereof to be paid out of the personal estate.

The defendant F. C. a trustee declared to be entitled to certain leasehold premises.

The Master directed to settle an allowance to be made to the defendant F. C. for his trouble in the execution of the trusts for the time past, and to inquire whether it will be for the benefit of the estate that he should be continued a trustee and receive compensation, and if proper, the Master to settle an allowance to be made to him, and the Master to make a separate report. The costs of all parties to be taxed and paid out of the personal estate.

testator had the principal and confidential management thereof, and being better acquainted therewith than any other person, and therefore it will be for the benefit of the said testator's estate that he should continue to be a trustee thereof, and the said Faithful Croft alleging that due attention to the affairs and concerns of the said testator will require so much of his time and attention as will be greatly prejudicial to his other pursuits and concerns in business, and therefore that he would not have undertaken to act therein but under the assurance that an application would be made to this court to authorize the allowance and payment of a reasonable compensation out of the said testator's estate for such his labor and time, and that he cannot continue to act therein without such reasonable allowance being made to him; It is ordered that it be referred to the Master to settle a reasonable allowance to be made to the said Faithful Croft out of the said testator's estate for his time pains and trouble in the execution of the said trusts for the time past; and in settling such allowance the said Master is to have regard to the legacy of 200*l.* given and bequeathed to the said Faithful Croft by the said will of the said testator on the execution of the trusts thereby reposed in him; And it is ordered that the said Master do inquire whether it will be for the benefit of the said testator's estate that the said Faithful Croft should continue to be a trustee under the said will and to receive a compensation for the future employment of his time and trouble; and in case the said Master shall be of opinion that it will be for the benefit of the said testator's estate that the said Faithful Croft should be continued a trustee, then the said Master is to settle a reasonable allowance to be made to the said Faithful Croft therein, and the said Master is to be at liberty to make a separate report, &c.; And it is ordered that the said Master do tax all parties their costs, &c.; And it is ordered that the same when taxed be paid to them by the said plaintiffs as executors out of the personal estate and effects of the said testator, &c.—Reg. Lib. B. 1819, fol. 777, 780.

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[ \*855 ] \*XXXVIII. *Decree establishing a will of real estate, and directing an account to be taken of the testator's debts, funeral expenses, and legacies, with directions in case the personal estate should be deficient, for raising the deficiency by mortgage or sale of the real estate.*

The will being admitted, decreed to be established and the trusts thereof to be performed; An account to be taken of the testator's debts and legacies;

Declare that the will of the said testator being admitted by the said defendant P. H. his heir at law, ought to be established and the trusts thereof performed, and doth order and decree the same accordingly; And that it be referred to Mr. — one, &c. to take an account of the said testator's debts funeral expenses and pecuniary legacies, and to compute interest on such of his debts as carry interest, and also to compute interest on his said legacies at the rate of 4*l.* per cent. per annum from the time the same ought to have been paid according to the said testator's will; And the said Master

is to cause an advertisement to be published in the London Gazette for the testator's creditors and pecuniary legatees to come in before him and prove their respective debts and claim their respective legacies within a time to be therein limited, or in default thereof they will be excluded the benefit of this decree. And the said Master is also to take an account of the personal estate of the said testator not specifically bequeathed come to the hands of the said defendant J. H. his surviving executor and the defendant P. H. or either of them, or any other person or persons for their or either of their use or by their or either of their order; And the said personal estate of testator is to be applied in payment of his debts funeral expenses and legacies in a due course of administration; And if there shall be any surplus of testator's personal estate remaining after payment of said testator's debts funeral expenses and pecuniary legacies, it is ordered and decreed that the same be equally divided between and paid or retained by the said defendant P. H. and the defendants Lord Viscount W. and S. his wife in right of the said S., and the defendant A. H. according to the said testator's will; But in case the said testator's personal estate shall not be sufficient to pay the said testator's debts and funeral expenses and pecuniary legacies, then it is ordered and decreed that the said defendant P. H. do out of the rents and profits of the said testator's real estates which have accrued since his death and been received and taken by him, keep down the interest of such of the said testator's debts and legacies as carry interest; And that so much of the principal of the said testator's debts and pecuniary legacies as his personal estate shall be deficient to pay and satisfy, be raised by mortgage or sale of a sufficient part of the said testator's real estate as the said Master shall direct, and that a sufficient part thereof be for that purpose mortgaged or sold with the approbation of the said Master, wherein all proper parties are to join, and all deeds and writings relating thereto in the custody or power of any of the parties are to be by them produced upon oath before the said Master as the said Master shall direct; And the money arising by such mortgage or sale is to be applied in the first place in payment and satisfaction of so much of the principal of the said debts as the said \*testator's personal estate shall fall short to satisfy, and then in payment of so much of the principal of the said pecuniary legacies as the said personal estate shall fall short to satisfy, and if the same shall be raised by mortgage of the said estate, then the said defendant P. H. is to keep down the interest thereof during his life; And it is further ordered that all the parties have their costs of this suit out of the said testator's estate to be taxed by the said Master.

the Master to compute interest on such as carried interest;

Advertisements to be published for the creditors and legatees to come in before the Master;

An account to be taken of the personal estate not specifically bequeathed, possessed by the defendants, the same to be applied

in a due course of administration, and the surplus to be divided according to the testator's will;

In case the personal estate should be insufficient to pay the debts, &c. the rents of the real estate to be applied in keeping down the interest of the debts and legacies, and the deficiency of

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the personal estate to be raised by mortgage or sale of the real estate; the interest of any mortgage of the testa-

to be kept down by the devisee during his life; the costs of all parties to be paid out of the testator's estate.

*XXXIX. Decree for an account of a testator's personal estate, and directing the appointment of a receiver.*

An account to be taken of the testator's leasehold estates and the rents thereof received by the defendants his executors; Also an account of the personal estate not specifically bequeathed possessed by the defendants; The Master to ascertain the value of a house taken by defendant; An inquiry directed as to what specific articles the defendants have possessed besides those delivered over; The Master to appoint a receiver at a salary; The receiver to be at liberty to let the estates with the approbation of the Master, and to pay all balances into the bank subject to further order.

Decree that it be referred to Mr. — one, &c. to take an account of what leasehold estates the testator was entitled to at the time of his death, and of the annual value thereof, and also an account of the rents and profits thereof accrued since the testator's death received by the defendants his executors or either of them or by any person or persons by their or either of their order or for their or either of their use; And it is ordered that the said Master do also take an account of the personal estate of the said testator not specifically bequeathed possessed or received by the defendants his executors or either of them, or by any person or persons by their or either of their order or for their or either of their use; And it is ordered that the Master do also inquire and state to the court what is the value of the leasehold house at, &c. lately belonging to the testator and taken by the defendant; And it is ordered that the said Master do also inquire and state to the court whether the defendants have possessed any and what specific articles bequeathed by the testator other than and except those which they have delivered to the specific legatees thereof; And for the better taking the said accounts and discovery of the matters aforesaid the parties are to be examined upon interrogatories and to produce all deeds, &c.; the Master to make just allowances, &c.

And it is ordered that the Master do appoint a proper person to be receiver of the rents and profits of the leasehold estates in question in this cause, and allow him a reasonable salary for his care and pains therein; such person so to be appointed receiver first giving security to be allowed of by the said Master, and taken before a Master Extraordinary in the country if there shall be occasion, duly and annually to account for what he shall receive of such rents and profits as the court shall direct; and the tenants of the said estates are to attorn and pay their rents in arrear and growing rents to such receiver, who is to be at liberty to let and set the said estates from time to time with the approbation of the said Master as there shall be occasion; And it is ordered that the person so to be appointed receiver do from time to time pass his accounts before the Master and pay the balances that shall be reported to be in his hands into the bank to be there placed to the credit of this cause, subject to the further order of this court; And reserve further consideration, &c.

*\*XL. Decree on further directions, directing the Master to compute subsequent interest on such debts as carried interest, and to take an account of any other debts remaining unpaid, also directing the sale of a sum of stock and payment thereof and out of other moneys of the debts to be reported due to the creditors, except the plaintiff, he consenting to waive his right; the executor directed to pay the balance in his hands into court, and directions given as to applying the proceeds in the hands of a consignee of a West India estate.*

His Honor did order that it should be referred back to the said Master to compute subsequent interest on such of the debts of the testator W. M. B. mentioned in the first schedule to his general report dated — whereon interest is thereby computed, and also to take an account of any other debts due from the said testator at his death remaining unpaid and not mentioned in the said first schedule to the said report; And it was further ordered that the sum of £—— bank 3 per cent. annuities standing in the name of the said Accountant-General in trust in the said cause, “The account of the said testator’s real estate,” should be sold with the privity of the said Accountant-General, and the money arising by such sale paid into the bank with the privity of the said Accountant-General to be there placed to the credit of the said cause, the like account; and that out of such money and out of the interest of the said bank annuities until such sale, and also out of the sum of £—— cash in the bank on the credit of the said cause, “The testator’s real estate,” and likewise out of the sum of £—— cash in the bank on the credit of the said cause, “The testator’s personal estate,” the several creditors of the said testator or their legal personal representatives should be paid what should be reported due to them except the said complainant W. H., he by his counsel consenting to waive his right or claim to receive any part of his debt out of the said bank annuities and cash; And it was further ordered that the said J. F. B. should pay into the bank the sum of £—— reported due from him by the said Master’s general report dated, &c. on account of the personal estate of the said testator with the privity of the said Accountant-General to be there placed to the credit of the said cause, “The account of the said testator’s personal estate;” And it was further ordered that C. S. the consignee of the rents profits and produce of the testator’s estate in the said island of St. C. should be continued and pass his accounts before the said Master; and that the said C. S. should out of the profits and produce of the said testator’s estate which might come to his hands pay the arrears and growing interest of the debt reported due to the said W. H. and of the legacies given by the said testator’s will and codicil, and also the arrears and growing payments of the annuities thereby given, and that he should pay the residue of such rents profits and produce into the bank with the privity of the said Accountant-General to be there placed to the credit of the said cause, subject to the further order of the court; And it was further

The Master to compute subsequent interest on such debts as carried interest, and to take an account of any other debts remaining unpaid;

A sum of stock to be sold and thereof and out of certain sums of cash the creditors to be paid the sums reported due to them excepting the plaintiff W. H.;

The executor directed to pay into the bank a sum reported due from him;

The consignee of a West India estate to be continued, and out of the produce in his hands to pay the arrears and growing interest of the debt due to W. H., and of the legacies, and also the arrears and

growing payments of the

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annuities, and the residue to be paid into the bank;

Directions given as to taxing costs and out of what funds to be paid;

Further directions reserved as to the questions in what proportions certain legacies and annuities should abate,

the question respecting the widow's paraphernalia reserved, and all further directions.

ordered that the said Master should tax all parties their cost of this suit other than \*the mortgagees who had been paid their costs, and that such costs when taxed should be paid to the solicitors for the said several parties out of the residue of the money to arise by sale of the said bank annuities before directed to be sold, and of the dividends that should accrue thereon until the sale thereof, and of the said sums of £—— and £—— cash in the bank in the said cause, the aforesaid accounts, (after payment of the said several creditors) and also out of the said sum of £—— before directed to be paid into the bank on the account of the personal estate, as far as the same would extend, and that the residue of such costs should be paid by the said C. S. out of the rents profits and produce of the said testator's estate in the said island of St. C. [and the usual directions were thereby given for the said Accountant-General to draw on the bank for the purposes aforesaid;] And his Honor did continue the reservation of any directions as to the question whether there were any and what circumstances affecting the said testator's estate to make it proper any ways and how far to lessen the two legacies of £—— each given by the said testator's will to his two daughters the said E. B. and L. B., and also the annuities of £—— sterling given by the said will to the said D. M. G., £—— St. C.'s currency thereby given to the said L. F., and also the two annuities of £—— each given by the first codicil to the testator's will to the said E. B. and L. B.; And his Honor did reserve the consideration of any question that might arise between the creditors of the said testator respecting the jewels and ornaments of the person of the said testator's wife which she usually wore, and of all further directions; and any of the parties were to be at liberty to apply to the court as there should be occasion.

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*XLI. Order directing a reference to the Master to inquire as to what part of a testator's personal estate is out on securities, which of them are proper to be continued or called in, with directions given for the latter purpose.*

Let the Master inquire what part of the said testator's estate is standing out upon securities and what debts are owing to the said estate, and whether any and which of them are proper to be called in or continued, and let such of them as the Master shall find are proper to be continued be continued accordingly, and let such of them as the Master shall find are proper to be called in be called in with the approbation of the said Master, and let the Master appoint a proper person for that purpose, and make him a reasonable allowance in respect thereof; and if it shall be necessary to put any of them in suit, let the same be put in suit accordingly in the name of the defendant E. C. the executrix, and let her be indemnified therein out of the said testator's estate.



**\*\*XLII.** *Decree on further directions in the original cause, and on the hearing of a supplemental suit ; the plaintiffs in the latter suit declared to be entitled to the benefit of the proceedings in the original cause, and to prosecute the same ; the accounts directed to be carried on from the foot of the former accounts, and the executor to be charged with a legacy retained by him and allowed in the Master's general report ; the testator's real estates declared to be subject to the payment of his simple-contract debts, and the plaintiffs in the second suit declared to be creditors to the amount of a sum of stock sold out by the testator, and an account directed to be taken of the dividends which would have accrued due in case the same had not been sold out ; construction of the will declared with regard to a devise of certain estates not exceeding 3000*l.* a-year as being to the separate use of a married woman for life (she having for some years been separated from her husband), with remainder to her children in fee ; the testator's shares in a theatre directed to be sold and the purchase-moneys paid into the bank. The costs of all parties to be taxed as between solicitor and client, and directions given out of what funds the same were to be paid.*

*The prayer of the original bill, the decree made at the original hearing, the Master's general report, and the prayer of the supplemental bill recited.*

Thursday the 15th day of March, in the 8th  
year of, &c. 1827.

Between G. Gooch, . . . . Plaintiff,  
and

J. Haworth and S. his wife, &c.  
Defendants.

And between L. M. Mestaer, &c. infants,  
all out of the jurisdiction of this court,  
at the Cape of Good Hope, by their next  
friend, . . . . Plaintiffs,

and  
G. G., J. H. and S. his wife, &c.

Defendants.

By original and supplemental bills.

The first mentioned cause coming on on the 18th day of April 1820, to be heard and debated before the Right Honorable the Master of the Rolls, in the presence of counsel learned on both sides, the scope of the plaintiff's bill appeared to be, that the will of the said testator P. E. M. might be established, and that the trusts thereof might be performed and carried into execution by and under the direction and decree of this court, and that the rights and interests of all the parties entitled and interested under the same right be ascertained and declared, and that an account might be taken of the said testator's freehold and copyhold estates devised by his will, and of the rents and profits thereof, and of the personal estate and effects of the said testator not specifically bequeathed,

Prayer of the original bill to have the testator's will established and the trusts thereof carried into execution, and the rights of all parties ascertained :

Accounts taken of the real and personal estates and of debts, &c.

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That the personal estate might be duly applied, and the clear residue ascertained and secured;

In case the personal estate should be insufficient, that the rents of the real estate might be applied in aid, and the deficiency supplied by sale of the real estate;

That the residue of the real estate and the surplus produce of any sales might be ascertained and secured;

That the plaintiff might be authorized to complete or to sell a ship on the stocks;

That a receiver might be appointed of the rents of the estates and of the outstanding personal estate;

That a defendant might set forth an account of the testator's effects possessed by her, and an inventory of all the effects in his possession at his decease, and that the Master may ascertain what

and of the said testator's funeral and testamentary expenses, and of his debts, and of the legacies and annuities given and bequeathed by his said will and codicil, and which accounts the plaintiff was ready and willing and thereby offered to come to \*in such manner as this court should direct, upon being indemnified and having all just allowances made to him in taking of such accounts, and that the said personal estate might be applied in payment of the said funeral and testamentary expenses debts legacies and annuities in a due course of administration, and that the clear residue (if any) might be ascertained and secured for the benefit of the persons who should be declared to be entitled thereto; and in case the said personal estate not specifically bequeathed should be found insufficient to pay the said funeral and testamentary expenses, debts legacies and annuities, that the rents and profits of the said freehold and copyhold estates might be applied in aid of the said personal estate, and that the deficiency (if any) might be supplied by the sale or mortgage of the whole or a competent part of the said freehold and copyhold estates, subject to such mortgages or equitable liens as were then subsisting therein, and that all proper parties might join in such sales, and that the residue of such freehold and copyhold estates (if any) and the surplus produce of the sales of such part as should be sold might be ascertained, and might be conveyed to or secured for the benefit of such persons as should be declared by the court entitled thereto or interested therein; and that the plaintiff might be authorized and directed either to complete the ship on the stocks or to sell and dispose thereof in its then present condition; and that some proper person or persons might be appointed to collect and receive the rents and profits of the said testator's freehold copyhold and leasehold estates, and also to collect and get in the debts and outstanding personal estate of the said testator, and that such directions might be from time to time given for the better collecting in and administering the estate of the said testator as to this court should seem fit; and that the said defendant S. H. might set forth a full true and just account of all the personal estate and effects of the said testator come to her possession or power, and in particular a full true and exact inventory of all the household goods furniture linen china plate jewels and effects in the possession of the said testator or in the said testator's dwelling-house or known at his decease, and that it might be referred to one of the Masters of this court to ascertain whether any and what part of the said household furniture and effects were the separate property of the said defendant; and that in the mean time the said defendant might be restrained by the injunction of this court from selling or disposing of the said household goods furniture linen china plate jewels and effects or any other part thereof, and from removing or permitting the same or any part thereof to be removed from the said testator's dwelling-house or houses, or from the place or places where the same then were; Whereupon and upon debate of the matter and hearing the will of P. E. M. dated the 2d day of June 1809, and the codicil thereto read, and what was alleged by the counsel on both sides, His Honor did order and decree

that it should be referred to Mr. A. then one of the Masters of this court, to take an account of the testator's personal estate not specifically bequeathed come to the hands of the plaintiff the executor, or any person or persons by his order or for his use, and \*of such part of the personal estate as had been sold, and of the outstanding personal estate; and the said Master was to distinguish such part of the said personal estate as was specifically bequeathed; And it was ordered that the said Master should inquire whether any part of the personal estate specifically bequeathed had been sold by the plaintiff, and if any had been sold, It was ordered that the said Master should inquire and certify the amount of the produce thereof; And it was ordered that the said Master should also take an account of the said testator's debts funeral expenses legacies and annuities, and compute interest on his debts carrying interest after such rate of interest as they respectively carried, and on his legacies from the time and at the rate directed by his will; and where no time of payment or rate of interest was directed, then at the rate of 4l. per cent. per annum for the end of one year after the death of the testator; And the said Master was to cause advertisements to be published in the London Gazette and such other public papers as he should think proper, for the creditors of the said testator to come in before him and prove their debts, and he was to fix a peremptory day for that purpose, and such of them as should not come in to prove their debts by the time so to be limited were to be excluded the benefit of the said decree; And it was ordered that the said testator's personal estate not specifically bequeathed should be applied in payment of his funeral expenses and debts in a course of administration, and then in payment of his legacies and annuities; And it was ordered that the clear residue thereof should be ascertained; And it was ordered that the said Master should inquire and certify whether any part of the household goods furniture linen china plate jewels and effects in the possession of the said testator or in and about his dwelling-houses at his decease, belonged to the said defendant S. H.; And it was ordered that the said Master should inquire and certify whether the said defendant J. E. M. was the heir at law of the said testator and whether there was or were any and what other child or children of the said defendant living at the decease of the said testator besides the said defendant L. M. M. the daughter of the said J. E. M.; And it was ordered that the said Master should inquire whether the said defendant L. M. M. or any of the said children had or hath obtained the age of twenty-one years, and what age they had respectively attained, and whether any and which of them had died, and whether any and what child or children had been born to the said defendant J. E. M. since the decease of the said testator; And it was ordered that the said Master should inquire whether any and what deed or instrument was entered into and executed on the part thereof was the defendant's separate property, and that in the [ \*861 ] mean time an injunction may issue to restrain her from selling or removing the same; Decree made directing a reference to the Master to take an account of personal estate not specifically bequeathed possessed by plaintiff the executor, what part had been sold, and what was outstanding; also to enquire what personal estate specifically bequeathed had been sold, and the produce thereof; Account directed of the testator's debts, funeral expenses, legacies, and annuities, with directions as to computing interest on debts and legacies. Advertisements to be published for the creditors to come in and prove; directions given as to the application of personal estate not specifically bequeathed; Inquiry directed what goods, furniture, &c. in the testator's possession at his decease belonged to defendant S. H.; Inquiry directed whether J. E. M. was the testator's heir at law, what other children the defendant had besides the plaintiff L. M. M. and as to their respective ages, whether any had died, and which of them had been born since the testator's death;

Inquiry directed as to a deed of separation executed by the defendants J. H. and S. H. and whether J. H. had notwithstanding any

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claim in his marital right to property and effects given by the testator to S. H. ;

The receiver to be continued, and directions given to the Master in passing his accounts, to distinguish the freehold and leasehold accounts, and the accounts of the parts specifically devised ;

Inquiry directed as to what sums had been paid by the plaintiff or receiver in repairs ;

by the plaintiff and Receiver in repairs of an estate specifically devised ;

the Master to be at liberty to make separate reports, and in taking the accounts to make all just allowances ;

the costs of all parties to be taxed, those of the plaintiff as between solicitor and client ;

inquiry directed as to what costs had been

occasion of the separation of the said defendant J. H. from the said defendant S. H. and whether notwithstanding such deed or instrument the said defendant J. H. had any and what claim or was entitled to any and what part of the property and effects given or devised to the said defendant S. H. by the will and codicil of the said testator in his the said defendant's marital right or otherwise ; And it was ordered that the receiver of the rents and profits of the real and leasehold estates, and of the outstanding personal estate should be continued, and pass his accounts before the said Master ; \*And it was ordered that the said Master in passing the said Receiver's accounts should distinguish the accounts of the freehold from the accounts of the leaseholds, and distinguish the accounts of such part of the said testator's real and leasehold estates as was specifically devised by his will ; And it was ordered that the said Master should inquire whether any and what sum of money had been paid by the said plaintiff and the said Receiver or either of them in the reparation of or relating to the said estate specifically devised ; And the said Master was to be at liberty to make a separate report or reports of any or either of the matters aforesaid as he should think proper, and for the better taking the several accounts and discovery of the matters aforesaid, the parties were to produce before the said Master upon oath all papers and writings in their custody or power relating to the matters aforesaid, and were to be examined upon interrogatories as the said Master should direct, who in taking of the said accounts was to make unto the parties all just allowances ; And it was ordered that the said Master should tax the costs of the said suit of all the parties to that time, the costs of the plaintiff to be taxed as between solicitor and client ; And it was ordered that the said Master should inquire whether any and what costs charges and expenses had been properly incurred by the said plaintiff as executor and trustee of the said testator's will in the execution and performance of the trusts of the said testator's will, or otherwise relating to the said testator's affairs ; And his Honor did reserve the payment thereof, and also the consideration of all further directions and of the subsequent costs of this suit until after the said Master should have made his general report ; And the parties were to be at liberty to exhibit an interrogatory in the Master's office and examine witnesses thereon to prove the will of the testator as to his real estate ; And any of the parties were to be at liberty to apply to this court as there should be occasion ; That in pursuance of the said decree the said Master made his report dated the 6th day of December 1824 which stands absolutely confirmed, and thereby certified that he found that all the creditors of the said testator named in the several reports therein before mentioned had subsequently been paid the several sums reported due to them out of a sum of 9115*l*. in manner directed by an order of the 30th day of July 1822, but a claim had been laid before him on behalf of the defendant J. E. M. and his children, the plaintiffs in the second mentioned cause, being the claim hereinafter mentioned, in respect of the trust funds sold out by the said testator as hereinafter stated ; And the said Master after stating the will and codicil of P. M. the father of the defendant J. E. M. and

of the said testator P. E. M., certified that it appears that the said P. M. died in January 1791, being at the time of his decease possessed of 100*l.* per annum consolidated long annuities standing in the books of the governor and company of the bank of England in his own name; And that the will was proved by the said P. E. M. and J. M. in the Prerogative Court of Canterbury on the 5th day of February 1791, and that the said J. M. died leaving the said testator P. E. M. him surviving and that the said testator P. E. M. received the dividends which became due on the said long annuities up to the 10th day of October 1801, and afterwards departed this \*life on the 6th day of February 1819, having by his will appointed the said plaintiffs G. G. and R. P. and W. L. his executors, and that in pursuance of an act of parliament passed in the 56th year of the reign of his late Majesty King George the Third, intituled, "An act "to authorize the transferring stock upon which dividends shall remain unclaimed for the space of at least ten years at the Bank of England, and also lottery prizes or benefits or balances or sums issued for paying the principal of stocks or annuities which shall not have been demanded for the same period, to the commissioners "for the reduction of the national debt," the said 100*l.* per annum consolidated long annuities were transferred out of the name of the said P. M. or otherwise in pursuance of the said act appropriated to the account of the commissioners for the reduction of the national debt, together with the amount of the dividends which accrued due thereon from the said 10th day of October 1801 inclusive, and that there became due for dividends on the said annuities up to and inclusively of the 5th day of April 1823 the sum of 2150*l.*, being for forty-three half-yearly dividends thereon; and that by an order made in the matter of the said act of parliament on the 29th day of November 1822, It was referred to Mr. J. lately one of the Masters of this honorable court, to inquire and state to the court what Bank long annuities which were standing in the name of the said P. M. in the books of the Governor and Company of the Bank of England had been transferred into the names of the commissioners for the reduction of the national debt under and by virtue of the said act of parliament, and what was due and unreceived for dividends in respect of the said Bank long annuities; and also to inquire and state to the court who was or were beneficially entitled to the said Bank long annuities and the interest due and unreceived thereon, and in what shares and proportions; And that in pursuance of the said order Mr. T. the successor of the said Master J. made his report bearing date the — day of — 1823, and thereby certified that he was of opinion that the said 100*l.* per annum consolidated long annuities standing in the name of the said P. M. which had been transferred into the name of the said commissions for the reduction of the national debt by virtue of the said act of parliament, belonged to the said P. M. deceased, and that the same passed under the will of the said P. M. to the said testator P. E. M. as his residuary legatee, and that the same, together

incurred by the plaintiff in the execution of the trusts of the will; the parties to be at liberty to examine witnesses in the Master's Office to prove the will;

[ \*863 ] Statement of the Master's report, certifying that all the creditors had been paid, and out of what fund, but that a claim had been laid before him on behalf of defendant J. E. M. and his children in respect of certain trust funds sold out by the testator; and certifying that P. M. died possessed of 100*l.* long annuities, that his will was proved by P. E. M. and J. M. that P. E. M. survived and received the dividends on the long annuities up to 1801, that he died in 1819; and that under the 56 Geo. 3. the 100*l.* long annuities were transferred to the account of the commissioners for the reduction of the national debt, together with the dividends accrued due thereon, amounting to 2150*l.*; Order made directing an inquiry as to what bank long annuities standing in the name of P. M. were transferred to the said commissioners, and what was due thereon, and who were beneficially entitled thereto; Statement of the Master's report certifying

ing his opinion that the 100*l.* long annuities passed under the will of P. M. to P. E. M. as his residuary legatee and that the same, together with the 2150*l.* the amount of dividends ac-

[ \*864 ]

crued due, formed part of the outstanding personal estate of P. E. M. and that G. G. his executor was beneficially entitled to the long annuities, that the same ought to be transferred into the Accountant-General's name, and that the 2150*l.* ought to be paid to the receiver. Statement of an order confirming the last stated report, and directing a transfer to be made to the Accountant-General of the 100*l.* long annuities, and payment of the 2150*l.* to the receiver, also directing a reference for taxation of costs and payment thereof out of the 2150*l.* ;

And further certifying that the 100*l.* long annuities were transferred into the name of the

with the sum of 2150*l.*, being the amount of forty-three half-yearly dividends upon the said long annuities from the 5th day of April 1802 to the said 5th day of April last inclusive, then formed part of the outstanding personal estate of the said testator P. E. M., and that he was further of opinion that the said G. G. as executor of the said P. E. M. deceased was beneficially entitled to the said consolidated long annuities, and that the same ought to be transferred by the said G. G. into the name of the Accountant-General of this court, in trust in this cause, and that the sum of 2150*l.* accrued for dividends thereon ought to be paid to the said C. T. the person appointed to collect and get in the outstanding personal estate of the said testator P. E. M., to be disposed of by him under \*the order and direction of this court; And the said Master W. by his said report of the — day of — 1824 found that by an order dated the — day of — 1823, It was ordered that the report of the said Master T. should be absolutely confirmed; And it was further ordered that the secretary or deputy secretary of the Governor and Company of the Bank of England should transfer unto the Accountant-General of this court in trust in this cause, the said sum of 100*l.* per annum consolidated long annuities theretofore standing in the name of the said P. M. and since transferred into the names of the commissioners for the reduction of the national debt; And it was further ordered that the said sum of 2150*l.* being the amount of the dividends accrued upon the said consolidated long annuities up to and inclusive of the 5th day of April 1823 should be paid unto the said receiver C. T.; And it was referred to the said Master T. to tax and settle the costs incurred by the said commissioners for the reduction of the national debt, and also by his Majesty's Attorney-General by the said plaintiff G. G. in the said matter, and that the said costs when taxed should be paid by the said C. T. out of the said sum of 2150*l.*, and that the residue of the said sum of 2150*l.* should be applied and disposed of by the said C. T. as such receiver as aforesaid under the direction of this honorable court; And he found that the said 100*l.* per annum consolidated long annuities were transferred into the name of the Accountant-General of this court in trust in this cause on the — day of — 1823, and that the said long annuities were then standing in the name of the said Accountant-General in trust in this cause; And he further found that the said C. T. as such receiver as aforesaid on the 14th day of August 1823 received the sum of 2025*l.*, being the said sum of 2150*l.* dividends accrued due on the said consolidated long annuities up to and inclusive of the dividends due on the 5th day of April last [*after allowing thereout for property tax and costs,*] and which said sum of 2025*l.* was included in the said C. T.'s fifth account as receiver of the outstanding personal estate of the said testator; And he further certified that under the circumstances aforesaid he had at the request of the solicitor for the said defendant J. E. M. thought fit to state those circumstances for the judgment of the court; And he further certified that a statement on the part of the said plaintiff G. G. had been laid before him, whereby it appeared that on or about the 10th day of January 1817 G. E. since deceased filed his bill in this court against the said testator, setting forth the

bond of the said testator bearing date the 1st day of March 1805 whereby the said testator became bound unto the said G. E. in the penal sum of 10,000*l.* with a condition for making the same void on payment of 5000*l.* and interest at the times thereafter mentioned, and also setting forth certain indentures of lease and release dated respectively the 28th day of February and the first day of March 1805, and made between the said testator of the one part and the said G. E. of the other part, by which indenture of release in consideration of 5000*l.* therein expressed to be paid to the said testator by the said G. E., he the said testator did convey a certain dock yard and several messuages tenements or dwelling-houses \*situate at R. in the county of S. part of the real estate of the said testator, and comprising the whole of his R. estate unto and to the use of the said G. E. his heirs and assigns for ever subject to redemption on payment by the said testator to the said G. E. of the said sum of £5000 with interest at £5 per cent. per annum on the 1st day of March 1806, and praying that an account might be taken by one of the Masters of this court of what was due to the said G. E. for principal and interest on his said security, and that the said testator might be decreed to pay to the said G. E. what should be so found due, and in default thereof that the said testator might be foreclosed from all equity of redemption in the same premises; And that the said testator filed a cross-bill against the said G. E. and thereby prayed that he the said testator might be let in to redeem the said mortgaged premises, and that an account might be taken of the principal and interest secured by the said mortgage, and of all sums paid or advanced by the said testator to or for the use of the said G. E. on account of the said mortgage; And in case it should appear that the said G. E. had been overpaid the amount of what was due to him in respect of his said mortgage, then that he might be decreed to repay to the said testator so much money as it should be found he had been overpaid, and that the said G. E. might be decreed to re-convey to the said testator and to deliver up the said indentures of lease and release and bond together with six several bills of exchange in the said cross-bill mentioned; And that after the death of the said testator the said G. E. filed his bill of revivor against the plaintiff G. G., and that afterwards the said G. E. died having appointed A. H. C. and W. H. executors of his will, and that since the death of the said G. E. his said executors had filed their bill of revivor and supplement against the said plaintiff G. G. and J. R. of, &c. esquire, who under and by virtue of certain indentures of lease and release bearing date the 27th and 28th days of November 1818, made between the said testator of the one part and the said J. R. of the other part was a mortgagee of the same premises for the sum of £8000 and interest at £5 per cent. per annum; And the said Master further found that the said G. G. put in his answer to the said last-mentioned bill, and that the said suits and proceedings were then

Accountant-General, and that the receiver had received the balance of the 2150*l.* after deducting the property tax and costs; And further certifying that a statement on [ \*865 ] the part of the plaintiff G. G. had been laid before him, whereby it appeared that G. E. filed a bill of foreclosure against the testator, setting forth a bond, and indentures of lease and release and mortgage executed by him for securing 5000*l.* and interest on an estate at R., and praying the usual account of principal and interest due, and for a foreclosure in default of payment; That the testator filed a cross-bill praying for redemption and to have an account taken of principal and interest secured by the mortgage, and of all sums paid by the testator on account; That after the testator's death the mortgagee filed a bill of revivor, and died having appointed A. H. C. and W. H. executors, who filed a bill of revivor and supplement against the plaintiff G. G. and J. R. a subsequent mortgagee; That the proceedings were then pending, but that £3000 had been paid to J. R. under an

order in part discharge of the principal due to him;

And further certifying that G. G. had retained his legacy of £500.

And also certifying what was due to J. E. M. for arrears of his annuity,

and also what was due to F. M. P. wife of defendant J.

[\*866]

P. for arrears of interest on her legacy, and also what was due to defendant E. E. M. A. for arrears of interest on her legacy, and also what was due to the other legatees, for their legacies and interest thereon as specified in his report;

As to the bequest of £3000 per annum to S. H. for life, the Master declined to proceed to take an account until the rights of all parties interested therein were ascertained;

As to the direction with regard to what household goods, &c. in the possession of the testator belonged to S. H., the Master certified that by a former order G. G. was direct-

pending, but the sum of £3000 had been paid to the said J. R. under an order made in this cause on the — day of — 1824 out of the outstanding personal estate of the said testator in part discharge of the said principal sum of £8000 and that the said interest on the remaining principal sum of £5000 had been paid up to the 28th day of November 1824 out of the rents and profits of the said testator's real estate; And as to the directions in the said decree that his predecessor should take an account of the said testator's legacies and annuities and compute interest on his legacies from the time and at the rate directed by his will and where no time of payment or rate of interest was directed then at the rate of £4 per cent. per annum from the end of one year after the death of the said testator, the said Master W. by his report found that the plaintiff G. G. had retained his said legacy of £500 out of the personal estate of the said testator, and that he had been allowed the same in his accounts of the said testator's \*personal estate come to his hands; And as to the bequests given by the said testator's will, he found that the sum of £4666 was then due to the defendant J. E. M. for arrears of the aforesaid annuity of £800 given to him for his life, such arrears being computed from the — day of — 1819 the day of the death of the said testator unto the — day of — 1824 being the date of his said report; and that the sum of £466 was due to the defendant F. M. P. late F. M. M. but then the wife of the defendant J. P. for arrears and interest of the aforesaid sum of £2000 bequeathed in manner aforesaid, such arrears being computed for the same period and at the rate of 4l. per cent. per annum; and that the like sum of £446 was due to the defendant E. E. M. A. widow, late E. E. M. M. for arrears of interest bequeathed as aforesaid in respect of the aforesaid sum of £2000, such arrears being also computed for the period and at the rate aforesaid; and that the several sums aforesaid particularly set forth in the last schedule to his said report and amounting together to the sum of £620 then remained due to the several other legatees in the testator's will and in the first schedule named, for the principal of their respective legacies, and for interest thereon computed at 4l. per cent. per annum from the 7th day of February 1820 (being one year after the death of the testator) unto the 5th day of December 1824; And as to the aforesaid bequest of £3000 per annum to the defendant S. H. for her life, and after her decease for the benefit of the children of the defendant J. E. M., he had not proceeded to take any account thereof being of opinion that no such account could be taken until this court should have declared the right and interests of the defendant S. H. under and by virtue of the testator's will; And as to the direction in the said decree that his predecessors should inquire whether any part of the household goods furniture linen china plate jewels and effects in the possession of the testator or in or about his dwelling-house at his decease belonged to S. H., he found that by an order dated the — day of — 1820 on the application of the said defendant S. H., It was ordered that the plaintiff should be at liberty to deliver to the said defendant S. H. the keys of the iron chests in the petition mentioned containing the jewels and plate, and that she should sign



an inventory of such jewels and plate and a receipt for the same ; And he found that in pursuance of the said order the said keys were delivered to the said defendant S. H. on the — day of — 1820, and that she signed an inventory and receipt for the same which was then in the hands of the said plaintiff ; And as to the other part of the effects in question, he found that by his predecessor's said separate report of the 19th day of June 1821 the said plaintiff had with the consent of the said defendant S. H. sold twelve houses and several cows specifically bequeathed to her for several sums of money amounting together to the said sum of £974 which was received by the plaintiff, and was included in the sum which his predecessor charged him in and by his said separate report ; And he found that the clear residue of the said testator's personal estate subject to the payment of the residue of the said mortgage debt of £8000 to the said J. R. and also to the said claim of the executors of the said G. E., and also subject to the claim of the said J. E. M. and his \*children in respect of the sale of the said 6666 $\frac{1}{2}$  bank 3 per cent. annuities, consist of the following particulars: in the name of the Accountant-General of this court in trust in this cause the sum of 100 $\frac{1}{2}$  per annum consolidated long annuities, and the sum of 100 $\frac{1}{2}$  cash arisen from interest thereon up to the — day — 1824 inclusive, also the sum of 124 $\frac{1}{2}$  cash remaining in the bank on the credit of this cause being the balance of personal estate paid into court after payment thereof of the debts found due to the creditors of the said testator as thereinbefore mentioned and of the costs of the said suit paid thereof as aforesaid, also of two Drury-Lane shares of small value, also of five River-Lea shares amounting to 500 $\frac{1}{2}$  which were deposited by the testator in the hands of R. W. of, &c. as security for payment of a balance of 500 $\frac{1}{2}$  and upwards due to him from the said testator and still continue in his hands, also of the several outstanding debts remaining due to the said testator's estate, and an unliquidated claim made by the said receiver upon the Columbian Government amounting to 7000 $\frac{1}{2}$ , but which claim hath not been admitted by the said Government, and doth also consist of a leasehold public house situate at W. let at the yearly rent of 30 $\frac{1}{2}$  and which was held by the said testator by lease granted by I. Earl T. deceased to the said P. M. deceased the father of the said testator at a ground rent of 7 $\frac{1}{2}$  10s. per annum, and which lease would expire at Lady-day 1833 ; And as to the direction in the said decree that his predecessor should inquire whether the said defendant J. E. M. was the heir at law of the said testator, he certified that having made the said inquiry he found that the said testator the said P. E. M. died a bachelor, leaving the said defendant J. E. M. his only brother and heir at law him surviving ; And as to the inquiry respecting the children of the said defendant J. E. M. he found his predecessor had made the separate report hereinbefore mentioned bearing date the — day of — 1823 ; And as to the direction in the said decree that his predecessor should inquire whether any and what deed or instrument was entered into and executed on the occasion of the separation of the said defendant J. H. from the said defendant S. H., and whether notwithstanding such deed or instrument the said

ed to deliver to her the keys of certain iron chests containing jewels and plate she signing an inventory thereof, and that the same was done ; And as to other part of the effects he certified that by a former report it appeared that the plaintiff [ \*867 ] had sold certain houses and cows and received the moneys produced thereby with which he had been charged ; Also certifying of what the clear residue of the personal estate consisted ; Also certifying that J. E. M. was the only brother and heir at law of the testator ; And as to the direction in the decree with regard to the deed of separation,

and what claim J. H. might have in the property bequeathed to S. H. by the testator, the Master certified that on account of loss of the deed as appeared by affidavits set forth he was unable to give any opinion how far the rights of the parties were affected;

[ \*868 ]

And further certifying as to the receiver's accounts;

defendant J. H. had any and what claim or was entitled to any and what part of the property and effects given or devised to the said defendant S. H. by the will and codicil of the said testator in the said defendant's marital right or otherwise, he found that by an affidavit of the said J. H. made in the said cause on the 25th day of July 1823 he made out that he had not then in his custody or possession or power the deed of separation made between him the said defendant J. H. and the said defendant S. H., nor did he know in whose custody possession or power the same was; And the said Master certified that the said defendant S. H. by an affidavit made before him in the said cause on the 5th day of March 1824 made out that a deed was executed on the occasion of her separation from the said defendant J. H. in or about the month of April 1797; and that one part of such deed was delivered to her and remained with her until the month of September 1820 or thereabouts, when at the request of T. H. who then acted as her solicitor in this cause she delivered the same to him for the purpose as he represented to her of laying the same before his the \*said Master's predecessor, and further that she had caused numerous applications to be made to the said T. H. for the said deed without being able to obtain the same, he the said T. H. stating that the said deed was lost, upon consideration of which several matters the said Master found that a deed was entered into and executed on the occasion of the said separation between the said defendant, but the same not having been produced to him and no evidence given as to the provisions of the said deed he was not able to give any opinion how far the rights of the said parties were affected thereby; And as to the direction that the said receiver of the rents and profits of the real and leasehold estates and of the outstanding personal estate should be continued and pass his accounts before his predecessor, and that in passing the said receiver's accounts he should distinguish the accounts of the freehold from the accounts of leasehold, and distinguish the accounts of such part of the said testator's real and leasehold estate as was specifically bequeathed by his will, he certified that the said receiver had passed his said accounts as to the said real estate up to Christmas in 1823 as appears by his said report bearing date the — day of — 1824; and that under an order of the — day of — 1823, and his certificate bearing date the — day of — 1824 he paid the said balance of the said account amounting to the sum of 186*l.* unto the said defendant S. H. on the said 4th day of June, and as to the said personal estate that he had passed his account up to the — day of — 1824 as appeared by his report bearing date the — day of — 1824, and had under an order bearing date the — day of — 1824 paid the balance of the said accounts to J. R. hereinbefore mentioned, and he certified that in passing the said accounts he distinguished the same in the manner directed by the said order; And as to the direction in the said decree that his predecessor should inquire whether any and what sums of money had been paid by the said plaintiff and the said receiver or either of them in the reparation or otherwise relating to the said estate specifically devised, he found that his predecessor had included the same in the

separate report of the — day of — 1821 hereinbefore mentioned; and that his predecessor had taxed the costs of the said suit and of all parties to the time of making the said order, and made a separate report thereof which bore date the — day of — 1821, and that the said costs were paid under the said order of the — day of — 1821; And he further found that in pursuance of another order bearing date the 30th day of July 1822 his predecessor taxed the subsequent costs of all the parties at the time of making the said order as between solicitor and client, and made a separate report thereof which bore date the 6th day of August 1823, and that the said costs had been since paid under an order bearing date the 25th day of July 1823; And as to the direction in the said decree that his predecessor should inquire whether any and what costs charges and expenses had been properly incurred by the said plaintiff as executor and trustee of the said testator's will in the execution and performance of the trusts of the said will or otherwise relating to the said testator's affairs, he certified that having made the said inquiry he found that the said plaintiff had incurred certain costs in the said suit instituted by the said A. H. C. and W. H. as executors of \*the said G. E. against him the said plaintiff amounting to the sum of 38*l.*, and also certain costs amounting to 41*l.* in defending an action brought by J. P. against the plaintiff as executor of the said testator to recover a debt which had previously been rejected by the said Master W.'s predecessor, and also certain other costs amounting to 70*l.* in defending an action brought by J. L. against the said plaintiff as executor of the said testator to recover another debt which had previously also been rejected by his predecessor, and also certain charges amounting to 49*l.* for various business relating to the said testator's estate transacted by the solicitors of the said plaintiff from August 1820 to March last past, and which said several costs charges and expenses amounted together to the sum of 200*l.*; and he found that the said plaintiff exclusive of the above costs and charges had also incurred costs in a suit instituted by or on behalf of E. J. A. widow against the said plaintiff as executor of the said testator, but which suit was dismissed, and the costs of the said plaintiff were ordered to be paid by the said E. J. A., but which have not yet been paid; And the said cause coming on on the 14th instant and on this present day to be heard for further directions and costs, in the presence of counsel learned on both sides, and the second mentioned cause coming on to be heard at the same time in the presence of counsel learned on both sides, The substance of the said bill, after stating the said decree and report in the said first mentioned cause, appeared to be, that P. E. M. being at the respective times of making his will and of his death, seised of divers freehold and copyhold estates, and being at the time of his death possessed of or entitled to a considerable personal estate and effects, and being a trader within the true intent and meaning of the laws relating to bankrupts, did make and publish his will bearing date —, which was signed by him and attested in such manner as by law is required for passing freehold estates, and was in the words and figures or to the import and effect following: (The bill after stating the will, the particulars

And further certifying that the costs of the suit had been taxed and paid;

And further certifying as to the amount of costs incurred by the plaintiff in the execution of the trusts of the will, and in defending certain suits and actions;

[ \*869 ]

Statement of the substance of the bill filed in the second mentioned cause,

[ \*870 ]

of the testator's property, and various petitions orders and reports, proceeded thus :) That in pursuance of the said order the said J. L. has been duly appointed receiver of the rents and profits of the freehold copyhold and leasehold estates, [in the place of C. T. the former receiver deceased] and S. M. S. has been duly appointed receiver of the outstanding personal estate and effects, and that the executors of the said C. T. the late receiver have duly passed his last accounts of the rents and profits and also of the personal estate and effects, and have paid the balance appearing due on account of the rents and profits to the said S. H. pursuant to the order of this court, and have paid the balance appearing due on account of the personal estate and effects with the privity of the Accountant-General to the credit of the said suit under the order of this court; That being entitled to a beneficial interest under the said will of the said testator P. E. M. the plaintiffs are, as they humbly submit, entitled to have the benefit of the said decree orders reports and proceedings in the said cause, and to have their rights and interests ascertained and secured by and under the direction and decree of this court; That the plaintiffs are, as they humbly submit, entitled to have the said trust fund or sum of 6666 $\frac{2}{3}$  3 per cent. consolidated bank annuities which was appropriated by the said testator P. E. M. \*out of the assets of the said testator P. M. to answer the said annuity of 2000 $\frac{1}{2}$  bequeathed by the said testator P. M. to the said P. E. M. and the plaintiffs, which was afterwards sold out by the said testator P. E. M. as aforesaid, raised and secured for the benefit of the plaintiffs; and that the said sum of 100 $\frac{1}{2}$  per annum long annuities part of the assets of the said P. M. which has been transferred into and now stands in the name of the Accountant-General in trust in this cause, and that the said sum of 2050 $\frac{1}{2}$  being the dividends thereof up to the 5th day of April 1823 received by the said C. T. the late receiver as aforesaid, and the subsequent dividends which have since accrued due thereon ought to be applied in the first place towards raising the said trust fund or sum of 6666 $\frac{2}{3}$  bank annuities, and that the deficiency ought to be raised out of the estate and effects of the said testator P. E. M.; And the plaintiffs charge that the said sum of 2050 $\frac{1}{2}$  having been applied towards payment of the said sum of 3000 $\frac{1}{2}$  to the said J. R. as aforesaid, the plaintiffs are entitled to stand in the place of the said J. R. as creditors upon the said mortgage estate for the sum of 2050 $\frac{1}{2}$  and the interest thereof, and the said defendant S. H. claims to be entitled by virtue of the said will of the said testator P. E. M. to some part of the said testator's real and personal estate absolutely, or in all events to some interest greater than a life estate therein, and the plaintiffs charge and humbly submit that according to the true construction of the said will of the said testator P. E. M. the said defendant S. H. is entitled only for her life to the yearly rent or sum of 3000 $\frac{1}{2}$  by and out of the annual income of the real and personal estates of the said testator if such income shall be sufficient for that purpose, and that subject to such yearly rent or sum of 3000 $\frac{1}{2}$  or to so much thereof as shall be produced by the annual income of the said real and personal estate, the same belongs to the plaintiffs the children of the said J. E. M.

in equal shares; Therefore that the defendants in the second mentioned cause might answer the matters aforesaid; And that they might have the benefit of the said suit decree•decretal orders report and proceedings in such manner as this court shall direct, and might be at liberty to prosecute the same; And that the rights and interests of the plaintiffs under the will and codicil of the said testator P. E. M. might be ascertained and declared and secured for the benefit of the plaintiffs, subject to raising and paying of the said trust fund or sum of 6666 $\frac{2}{3}$  per cent. consolidated bank annuities; And that it might be declared that the plaintiffs are entitled to have the said trust fund or sum of 6666 $\frac{2}{3}$  per cent. bank annuities raised and secured for their benefit; And that the said sum of 100 $\frac{1}{2}$  per annum long annuities standing in the name of the said Accountant-General in trust in the said cause of Gooch v. Haworth, and the said sum of 2050 $\frac{1}{2}$ ., the dividends thereof received by the said late receiver C. T. and the subsequent dividends of the said long annuities, ought to be applied towards raising the said sum of 6666 $\frac{2}{3}$  bank annuities, and that the deficiency might be raised out of the estate and effects of the said testator P. E. M., and that the said long annuities the sum of 2050 $\frac{1}{2}$  and subsequent dividends might be applied accordingly; And that the deficiency might be raised accordingly out of the real and personal estate and effects of the \*said P. E. M., and that for that purpose it might be declared that the said P. E. M. was at the time of his death a trader within the true intent and meaning of the laws relating to bankrupts; And that it might be declared that the plaintiffs are entitled to stand in the place of the said J. R. as creditors upon the said mortgaged estate for the said sum of 2050 $\frac{1}{2}$  part of the said sum of 3000 $\frac{1}{2}$  paid to him as aforesaid and the interest thereof, and that the plaintiffs might have the benefit of the said mortgage security accordingly; And to be relieved is the scope of the plaintiff's bill in the second mentioned cause; Whereto the counsel for the defendant S. H. alleged that, &c. [*stating the substance of the answers of the several defendants;*] Whereupon and upon debate of the matter and hearing the decree dated the 18th day of April 1820, the report dated the 6th day of December 1824, and exhibit marked (A), being the will of P. E. M., the codicil thereto, and the proofs taken in these causes read, and what was alleged by the counsel on both sides, THIS COURT DOETH DECREE that the plaintiffs in the cause of Mestaer v. Gooch are entitled to the benefit of the proceedings in the original cause of Gooch v. Haworth, and doth order that they be at liberty to prosecute the same as parties thereto; And it is ordered that it be referred back to the Master to carry on the account of the testator's personal estate from the foot of his report dated the 6th day of December 1824; And this court doth reserve any question as to the application of the specific legacies given by the will of the testator P. E. M. to the payment of the said testator's debts; And it is ordered that the said Master do carry on the account of the defendant G. G. from the foot of his last account, and therein charge him with the sum of 500 $\frac{1}{2}$  allowed to him in the schedule to the said Master's report dated the 19th day of June 1821, on account of his legacy under the said testator's will; And

Praying that the plaintiffs might have the benefit of the former proceedings, and be at liberty to prosecute the same, that the rights and interest of the plaintiffs might be ascertained and secured, and that they might be declared entitled to have a sum of 6666 $\frac{2}{3}$  stock raised, and that certain funds might be applied towards raising the same, and the deficiency raised out of

[\*871] the testator's real and personal estate; that it might be declared that the testator was a trader liable to the bankrupt laws; and that the plaintiffs might be declared entitled to stand in the place of a mortgagee for part of a sum paid to him; Decree.—The plaintiffs in the second cause entitled to the benefit of the proceedings in the original cause, and to prosecute the same as parties thereto. Directions to the Master to carry on the account of the testator's

personal estate from the foot of his report;

question reserved as to application of specific legacies to payment of debts; the Master directed to carry on the executor's account from the foot of the last account, and charge him with a legacy retained by him;

Testator's will declared to be well proved, and his real estates liable

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to the payment of simple contract debts, and the plaintiffs in the second cause to be considered as creditors to the amount of 6666 $\frac{1}{2}$  stock; an account to be taken of what is due to the mortgagee.

Estates not exceeding 3000 $\frac{1}{2}$  per annum declared to be well devised to S. H. for life, with remainder to her children in fee, and not subject to legacies; an account to be taken of what is due to the testator's estate under a certain deed; also an account of the dividends

this court doth declare the will of the testator P. E. M. well proved and doth declare that the said testator having been a trader at the time of his death, his freehold estates are liable to the payment of his simple-contract debts in case of a deficiency of his personal estate, and that J. E. M. and L. M. M., and P. M., J. E. M. and M. M. infants, his children, are to be considered as creditors on the estate of the said P. E. M. to the amount of 6666 $\frac{1}{2}$  bank annuities; And it is ordered that the said Master do take an account of what is due under or by virtue of the indenture of mortgage made to J. R. in the Master's report mentioned; And this court doth declare that the testator's copyhold estate at — and all the freehold and copyhold estate of the said testator not exceeding 3000 $\frac{1}{2}$  per annum, are well devised to the defendant S. H. for her life for her separate use, with remainder to the children of the defendant J. E. M. as tenants in common in fee, and are not subject to the legacies given by the said testator's will; And it is ordered that the said Master do take an account of what is now due to the estate of the said testator P. E. M. under the indenture of the 31st day of December 1796 in the pleadings of this cause mentioned; And it is ordered that the said Master do make an account of the dividends which would have accrued due in respect of the 6666 $\frac{1}{2}$  bank 3 per cent. annuities, in case \*the same had not been sold out; And it is ordered that the said testator's shares in the Theatre Royal Drury Lane be sold by some proper person to be approved of by the said Master to the best purchaser or purchasers that can be got for the same, to be allowed of by the said Master, wherein all proper parties are to join as the Master shall direct; and in order to such sale, It is ordered that all deeds and writings in the custody or power of any of the parties be produced before the Master upon oath; And it is ordered that the moneys to arise by such sale, the amount thereof to be verified by affidavit, be paid into the bank with the privity of the Accountant-General of this court, to the credit of the said cause, *Gooch v. Haworth*, subject to the further order of the court; And it is ordered that the receiver of the rents appointed in the cause of *Gooch v. Haworth* of the said testator's freehold and copyhold and leasehold estates be continued and pass his accounts before the Master, and pay the balances to be reported due from him according to the order of the 28th day of May 1823; And it is ordered that the person appointed to collect and get in the said testator's personal estate be continued and pass his accounts, and pay the balance to be reported due from him into the bank with the privity of the said Accountant-General to the credit of the cause, *Gooch v. Haworth*, subject to the further order of the court; And it is ordered that the said Master do tax the costs of these suits of all parties to this time as between solicitor and client; And it is ordered that the said Master be at liberty to make a separate report thereof, and also separate reports of any other of the matters hereby referred to him, as he shall think fit; And it is ordered that such costs when taxed, and also the sum of 200 $\frac{1}{2}$  the amount of the costs charges and expenses found by the said Master's report of the 6th day of December 1824 to have been incurred by the plaintiff G. G., be paid out of the said sum of 150 $\frac{1}{2}$  part of the sum of 358 $\frac{1}{2}$  cash,

on the credit of the cause *Gooch v. Haworth*, and out of any other cash which may remain on the credit of the same cause; and in case such cash shall not be sufficient, It is ordered that so much of the 3805*l.* bank 3 per cent. annuities standing in the name of the Accountant-General of this court in trust in the same cause, as will with the said sum of 150*l.* cash raise the amount of such costs when taxed and the said sum of 200*l.*, be sold with the privity of the said Accountant-General, and one of the cashiers of the bank is to have notice and receive the money to arise by such sale, who upon receipt thereof is to pay the same into the bank with the privity of the said Accountant-General, to be there placed to the credit of the said cause; And out of the money to arise by such sale and such cash, It is ordered that such costs when taxed, and also the said sum of 200*l.* the amount of the costs charges and expenses found by the said Master's report of the 6th day of December 1824 to have been incurred by the said plaintiff G. G., be paid in manner following, viz. &c. &c.

And for the purposes aforesaid the said Accountant-General is to draw on the bank according to the form prescribed by the act of parliament, and the general rules and orders of this court in that case made and provided; And any of the parties are to be at liberty to apply to this court as there shall be occasion.

which would have accrued due in respect of the 6666*l.* stock in case same had not been sold out; the testator's shares in a theatre directed to be sold, and the moneys to arise therefrom to be paid into the bank; the Receivers directed to be continued and to pass their accounts; Costs of all parties to be taxed as between solicitor and client; Master to be at liberty to are to be paid.

make separate reports; directions given out of what funds the costs





# APPENDIX.

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## ORDERS IN CHANCERY.

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### COURT OF CHANCERY.

3d April, 1828.

THE Right Honorable JOHN Lord LYNDEHURST, Lord High Chancellor of Great Britain, by and with the advice and assistance of the Right Honorable Sir JOHN LEACH, Master of the Rolls, and the Right Honorable Sir LANCELOT SHADWELL, Vice-Chancellor of England, doth hereby order and direct in manner following; that is to say:

#### I.

That every plaintiff, as well in a country cause as in a town cause, shall be at liberty, without affidavit, to obtain an order for a subpoena returnable immediately; but such subpoena in a country cause is to be without prejudice to the defendant's right to eight days time to enter his appearance after he has been served with the subpoena.

#### II.

That a writ of subpoena to appear, or to appear and answer, shall be sued out for each defendant, except in the case of husband and wife defendants; and that the costs of all such writs shall be costs in the cause.

#### III.

That a defendant in a country cause shall no longer be permitted to crave the common *dedimus*, but shall either put in his answer within eight days after his appearance, or shall obtain the usual orders for time.

#### IV.

That in all cases, whether the defendant's answer be filed in term time or in vacation, the plaintiff shall be allowed two months to deliver exceptions to such answer; but if the exceptions be not delivered within the two months, the answer shall thenceforth be deemed sufficient, and the plaintiff shall have no order to deliver exceptions *nunc pro tunc*.

#### V.

That when exceptions taken to an answer for insufficiency are not submitted to, the plaintiff may at the expiration of eight days after the exceptions are delivered, but not before, unless in injunction causes, refer such answer for insufficiency; and if he do not refer the same within the next six days he shall be considered as having abandoned the exceptions; in which latter case such answers shall be thenceforth deemed sufficient.

#### VI.

That if the plaintiff do not within a fortnight after a defendant's second or third answer is filed, refer the same for insufficiency on the old exceptions, such answer shall thenceforth be deemed sufficient.

#### VII.

That if the plaintiffs do refer a defendant's second or third answer for insufficiency on the old exceptions, then the particular exception or exceptions to which he requires a further answer shall be stated in the order.

## VIII.

That if upon a reference of the exceptions the Master shall find the answer insufficient, he shall fix the time to be allowed for putting in a further answer, and shall specify the same in his report, from the date whereof such time shall run, and it shall not be necessary for the plaintiff to serve a subpoena for the defendant to make a better answer; and any defendant who shall not put in a further answer within the time so allowed, shall be in contempt, and be dealt with accordingly.

## IX.

That if upon a reference of exceptions the answer be certified sufficient, it shall be deemed to be so from the date of the Master's report; and if the defendant submit to answer without a report from the Master, the answer shall be deemed insufficient from the date of the submission.

## X.

That upon a third answer being reported insufficient, the defendant shall be examined upon interrogatories to the points reported insufficient, and shall stand committed until such defendant shall have perfectly answered such interrogatories, and shall pay in addition to the 4*l*. costs heretofore paid, such further costs as the Court shall think fit to award.

## XI.

That no order shall be made for referring any pleading or other matter depending before the court for scandal or impertinence, unless exceptions are taken in writing and signed by counsel, describing the particular passages which are considered to be scandalous or impertinent, nor unless such order be obtained within six days after the delivery of such exceptions.

## XII.

That when any order is made for referring an answer for insufficiency, or for referring an answer or other pleading or matter depending before the Court for scandal or impertinence, the order shall be considered as abandoned unless the party obtaining the order shall procure the Master's report within a fortnight from the date of such order, or unless the Master shall within the fortnight certify that a further time, to be stated in his certificate, is necessary in order to enable him to make a satisfactory report, in which case the order shall be considered as abandoned if the report be not obtained within the further time so stated; and where such order relates to alleged insufficiency in an answer, such answer shall be deemed sufficient from the time when the order is to be considered as abandoned.

## XIII.

That the plaintiff shall be at liberty before filing a replication to obtain, upon motion or petition without notice, one order for leave to amend the bill; but no further leave to amend shall be granted before replication, unless the Court shall be satisfied by affidavit that the draft of the intended amendments has been settled, approved and signed by counsel, and that such amendments are not intended to be made for the purpose of delay or vexation, but because the same are considered to be material to the case of the plaintiff; such affidavit to be made by the plaintiff, or one of the plaintiffs where there is more than one, or his her or their solicitor, or by such solicitor alone in case the plaintiff or plaintiffs, from being abroad or otherwise, shall be unable to join therein; but no order to amend shall be made before replication, either without notice, or upon affidavit, in manner hereinbefore mentioned, unless such order be obtained within six weeks after the answer if there be only one defendant, or after the last of the answers if there be two or more defendants, is to be deemed sufficient.

## XIV.

That every order for leave to amend the bill shall contain an undertaking by the plaintiff to amend the bill within three weeks from the date of the order; and in default thereof, such order shall become void, and the cause shall, as far as relates to any motion to dismiss the bill for want of prosecution, stand in the same situation as if such order had not been made.

## XV.

That after a replication has been filed, the plaintiff shall not be permitted to withdraw it and to amend the bill without a special order of the Court for that purpose, made upon a motion of which notice has been given; the Court being satisfied by affidavit that the matter of the proposed amendment is material, and could not, with reasonable diligence, have been sooner introduced into the bill.

## XVI.

That where the answer of a defendant is to be deemed sufficient, whether it be in term time or in vacation, if the plaintiff or plaintiffs shall not proceed in the cause, the defendant shall be at liberty to move at the first seal after the following Term, upon notice, that the bill be dismissed with costs for want of prosecution; and the bill shall accordingly be dismissed with costs, unless the plaintiff or plaintiffs shall forthwith file a replication, and appear upon such motion, and give an undertaking to speed the cause with effect in the usual form; or, without filing a replication, shall appear upon such motion, and give an undertaking to hear the cause, as against the defendant making the motion, upon bill and answer; or unless it shall appear that the plaintiff or plaintiffs is or are unable to proceed in the cause by reason of any other defendant or defendants not having sufficiently answered the bill, and that due diligence has been used to obtain a sufficient answer or answers from such other defendant or defendants, in which case the Court shall allow to the plaintiff or plaintiffs such further time for proceeding in the cause as shall appear to the Court to be reasonable.

## XVII.

That where the plaintiff files a replication without having been served with a notice of any motion to dismiss the bill for want of prosecution, the plaintiff shall serve the subpoena to rejoin and obtain his order for a commission within one week from the filing of the replication; and if such order be obtained in Term time, then such commission shall be at the latest returnable on the first return of the following Term; and if such order be obtained in the Vacation, then such commission shall be returnable at the latest on the last return of the following Term; and where such commission is returnable on or before the first return of the following Term, there the plaintiff shall give his rules to produce witnesses and pass publication in that Term, and shall set down his cause to be heard in the following Term; and where such commission is returnable on or before the last day of the following Term, there the plaintiff shall give his rules to produce witnesses and pass publication in the next Term, and shall set down his cause to be heard in the third Term; and if the plaintiff shall make any default herein, then upon application by the defendant upon motion or petition without notice, the plaintiff's bill shall stand dismissed out of Court with costs.

## XVIII.

That publication shall not be enlarged except upon special application to the Court, supported by affidavit, and at the costs of the party applying unless otherwise ordered by the Court.

## XIX.

That whenever the time allowed for any of the following purposes, that is to say for amending any bill, for filing, delivering and referring exceptions to any answer, or for obtaining a Master's report upon any exceptions, would expire in the interval between the last seal after Trinity Term and the first seal before Michaelmas Term, or between the last seal after Michaelmas Term and the first seal before Hilary Term, such time shall extend to and include the day of the general Seal then next ensuing.

## XX.

That service on the Clerk in Court of any subpoena to rejoin, or to answer an amended bill, or to hear judgment, shall be deemed good service.

## XXI.

That the order *nisi* for confirming a report may be obtained upon petition as well as by motion, and that service thereof upon the Clerk in Court of any party shall be deemed good service upon such party.

## XXII.

That every notice of motion, and every petition notice of which is necessary, shall be served at least two clear days before the hearing of such motion or petition.

## XXIII.

That the order *nisi* for dissolving the common injunction may be obtained upon petition as well as by motion, and that every such order be served two clear days at least before the day upon which cause is to be shown against dissolving the injunction.

## XXIV.

That when a defendant in contempt for want of answer, obtains upon filing his answer the common order to be discharged as to his contempt on payment or tender of the costs thereof, the plaintiff shall not, by accepting such costs, be compelled in the event of the

answer being insufficient, to re-commence the process of contempt against the defendant, but shall be at liberty to take up the process at the point to which he had before proceeded.

## XXV.

That no witness to be examined before either of the Examiners for any party in a cause be in future produced at the seat of the Clerk in Court for the opposite party; but that a notice in writing containing the name and description of the witness be served there as heretofore.

## XXVI.

That the Examiner who shall take the examination in chief of any witness shall be at liberty to take his cross-examination also.

## XXVII.

That where the same solicitor is employed for two or more defendants, and separate answers shall have been filed, or other proceedings had by or for two or more defendants separately, the Master shall consider in the taxation of such solicitor's bill of costs either between party and party or between solicitor and client, whether such separate answers or other proceedings were necessary or proper, and if he is of opinion that any part of the costs occasioned thereby has been unnecessarily or improperly incurred, the same shall be disallowed.

## XXVIII.

That where a plaintiff obtains a decree with costs, there the costs occasioned to the plaintiff by the insufficiency of the answer of any defendant shall be deemed to be part of the plaintiff's costs in the cause, such sum or sums being deducted therefrom as were paid by the defendant according to the course of the Court, upon the exceptions to the said answer being submitted to or allowed.

## XXIX.

That where the plaintiff is directed to pay to the defendant the costs of the suit, there the costs occasioned to a defendant by any amendment of the bill shall be deemed to be part of such defendant's costs in the cause (except as to any amendment which may have been made by special leave of the Court, or which shall appear to have been rendered necessary by the default of such defendant;) but there shall be deducted from such costs any sum or sums which may have been paid by the plaintiff according to the course of the Court at the time of any amendment.

## XXX.

That when upon taxation a plaintiff who has obtained a decree with costs is not allowed the costs of any amendment of the bill, upon the ground of its having been unnecessarily made, the defendant's costs occasioned by such amendment shall be taxed, and the amount thereof deducted from the costs to be paid by the defendant to the plaintiff.

## XXXI.

That upon the allowance of any plea or demurrer, the plaintiff or plaintiffs shall pay the defendant or defendants the taxed costs thereof; and when such plea or demurrer is to the whole bill, then the further taxed costs of the suit also; unless in the case of a plea the plaintiff or plaintiffs shall undertake to reply thereto, and then the costs shall be reserved, or unless the Court shall think fit to make other order to the contrary.

## XXXII.

That upon the overruling of any plea or demurrer, the defendant or defendants shall pay to the plaintiff or plaintiffs the taxed costs occasioned thereby, unless the Court shall make other order to the contrary.

## XXXIII.

That when two Counsel appear for the same party or parties upon the hearing of any cause or matter, and it shall appear to the Master to have been necessary or proper for such party or parties to retain two Counsel to appear, the costs occasioned thereby shall be allowed, although both of such Counsel may have been selected from the Outer Bar.

## XXXIV.

That when a cause which stands for hearing is called on to be heard, but cannot be decided by reason of a want of parties or other defect on the part of the plaintiff, and is therefore struck out of the paper, if the same cause is again set down, the defendant or defendants shall be allowed the taxed costs occasioned by the first setting down, although he or they do not obtain the costs of the suit.

## XXXV.

That where a cause being in the paper for hearing is ordered to be adjourned upon payment of the costs of the day, there the party to pay the same, whether before the Lord High Chancellor, the Master of the Rolls, or the Vice-Chancellor, shall pay the sum of 10*l*. unless the Court shall make other order to the contrary.

## XXXVI.

That whenever upon the hearing of any cause or other matter it shall appear that the same cannot conveniently proceed by reason of the solicitor for any party having neglected to attend personally, or by some proper person on his behalf, or having omitted to deliver any paper necessary for the use of the Court, and which according to its practice ought to have been delivered, such solicitor shall personally pay to all or any of the parties such costs as the Court shall think fit to award.

## XXXVII.

That the sworn Clerks of the Court and the Waiting Clerks shall not be entitled to receive any fees for attendance in Court, except in cases where they shall actually attend, and where their attendance shall be necessary.

## XXXVIII.

That where any cause which is set down to be heard either in the Court of the Lord Chancellor or in the Court of the Master of the Rolls, shall be afterwards set down to be heard in the other of the said two Courts, there the solicitor for the plaintiff shall certify the fact to the Registrar of the Court where the cause was first set down, who shall cause an entry thereof to be made in his book of causes, opposite to the name of such cause; and the solicitor for the plaintiff shall be allowed a fee of six shillings and eight pence for so certifying the fact, if he shall certify the same within eight days after the said cause is so set down a second time.

## XXXIX.

That where any cause shall become abated, or shall be compromised after the same is set down to be heard in either of the said two Courts, the solicitor for the plaintiff shall also certify the fact, as the case may be, to the Registrar of the Court where the cause is so set down, who shall in like manner cause an entry thereof to be made in his cause book, and the solicitor for the plaintiff shall be allowed the same fee of six shillings and eight pence for such certificate, if he shall certify the fact as soon as the same shall come to his knowledge.

## XL.

That the penal sum in the bond to be given as a security to answer costs by any plaintiff who is out of the jurisdiction of the Court, be increased from forty pounds to one hundred pounds.

## XLI.

That the deposit upon exceptions to a Master's report shall be increased to £10, to be paid to the adverse party if the exceptions are overruled, in which case the exceptant shall also pay the further taxed costs occasioned by such exceptions, unless the Court shall otherwise order; but in case the exceptant shall in part succeed, the deposit shall be dealt with and costs shall be paid as the Court shall direct.

## XLII.

That the deposit upon every petition of appeal or rehearing be increased to £20, to be paid to the adverse party when the decree or order appealed from is not varied in any material point, together with the further taxed costs occasioned by the appeal or re-hearing, unless the court shall otherwise order.

## XLIII.

That for the purpose of enabling all persons to obtain precise information as to the state of any cause, and to take the means of preventing improper delay in the progress thereof, any Clerk in Court shall at the request of any person, whether a party or not in the suit or matter inquired after, procure and furnish a certificate from the Six Clerk's Office, specifying therein the dates and general description of the several proceedings which have been taken in any cause in the said office, whether such Clerk in Court be or not concerned as Clerk in Court in the cause, and that he shall be entitled to receive the sum of three shillings and four pence for such certificate, and no more.

## XLIV.

That whenever a person who is not a party appears in any proceeding either before the Court or before the Master, service upon the solicitor in London by whom such party appears, whether such solicitor act as principal or agent, shall be deemed good service, except in matters of contempt requiring personal service.

## XLV.

That clerical mistakes in decrees or decretal orders, or errors arising from any accidental slip or omission, may at any time before enrolment be corrected upon petition, without the form and expense of a rehearing.

## XLVI.

That every application to stay proceedings upon any decree or order which is appealed from, be made first to the Judge who pronounced the decree or order.

## XLVII.

That every application for the new trial of any issue at law directed by a Judge of this Court, be first made to the Judge who directed such issue.

## XLVIII.

That where any decree or order referring any matter to a Master is not brought into the Master's office within two months after the same decree or order is pronounced, there any party to the cause, or any other party interested in the matter of the reference, shall be at liberty to apply to the Court by motion or petition, as he may be advised, for the purpose of expediting the prosecution of the said decree or order.

## XLIX.

That every Master shall enter in a book to be kept by him for that purpose, the name or title of every cause or matter referred to him, and the time when the decree or order is brought into his office, and the date and description of every subsequent step taken before him in the same cause or matter, and the attendance or non-attendance of the several parties on each of such steps, so that such book may exhibit at one view the whole course of proceeding which is had before him in each particular cause and matter.

## L.

That upon the bringing in of every decree or order, the solicitor bringing in the same shall take out a warrant appointing a time which is to be settled by the Master, for the purpose of the Master taking into consideration the matter of the said decree or order, and shall serve the same upon the Clerks in Court of the respective parties, or upon the parties or their solicitors in cases where they shall have no Clerks in Court.

## LI.

That at the time so appointed for considering the matter of the said decree or order, the Master shall proceed to regulate, as far as may be, the manner of its execution; as for example, to state what parties are entitled to attend future proceedings, to direct the necessary advertisements, and to point out which of the several proceedings may be properly going on *pari passu*, and as to what particular matters interrogatories for the examination of the parties appear to be necessary, and whether the matters requiring evidence shall be proved by affidavit or by examination of witnesses, and in the latter case, if necessary, to issue his certificate for a commission; and if the Master shall think it expedient so to do, he shall then fix a certain time or certain times within which the parties are to take any certain proceeding or proceedings before him.

## LII.

That upon any subsequent attendance before him in the same cause or matter, the Master, if he thinks it expedient so to do, shall fix a certain time or certain times within which the parties are to take any other proceeding or proceedings before him.

## LIII.

That where some or one but not all the parties do attend the Master at an appointed time, whether the same is fixed by the Master personally or upon a warrant, there the Master shall be at liberty to proceed *ex parte* if he thinks it expedient, considering the nature of the case, so to do.

## LIV.

That where the Master has proceeded *ex parte*, such proceedings shall not in any manner be reviewed in the Master's office, unless the Master, upon a special application made to him for that purpose by a party who was absent, shall be satisfied that he was not guilty of wilful delay or negligence, and then only upon payment of all costs occasioned by his non-attendance; such costs to be certified by the Master at the time, and paid by the party or his solicitor before he shall be permitted to proceed on the warrant to review.

## LV.

That where a proceeding fails by reason of the non-attendance of any party or parties, and the Master does not think it expedient to proceed *ex parte*, there the Master shall be at liberty to certify what amount of costs, if any, he thinks it reasonable to be paid to the party or parties attending by the absent party or parties, or by his or their solicitor or solicitors, or Clerk or Clerks in Court, personally, as the Master in his discretion shall think fit; and upon motion or petition, without notice, the Court will make order for the payment of such costs accordingly.

## LVI.

That where the party actually prosecuting a decree or order does not proceed before the Master with due diligence, there the Master shall be at liberty, upon the application of any other party interested either as a party to the suit, or as one who has come in and established his claim before the Master under the decree or order, to commit to him the prosecution of the said decree or order; and from thenceforth, neither the party making default, nor his solicitor, shall be at liberty to attend the Master as the prosecutor of the said decree or order.

## LVII.

That upon any application made by any person to the Court, the Master, if required by the person making the application, shall, in as short a manner as he conveniently can, certify to the Court the several proceedings which shall have been had in his office in the same cause or matter, and the dates thereof.

## LVIII.

That every Master shall be at liberty, without order, to proceed in all matters *de die in diem* at his discretion.

## LIX.

That every warrant for attendance before the Master shall be considered as peremptory, and the Master shall be at liberty to continue the attendance beyond the hour and during such time as he thinks proper, and shall be empowered to increase the fee for the solicitor's attendance in proportion to the time actually occupied; and in case the Master shall not be attended by the solicitor, or a competent person on the behalf of the solicitor, of any party, the Master shall in such case disallow the usual fee for the solicitor's attendance, taking care either in allowing an increased fee or disallowing the usual fee, to mark his determination in his attendance Book, and also on the warrant for attendance.

## LX.

That where by any decree or order of the Court, books, papers, or writings are directed to be produced before the Master for the purposes of such decree or order, it shall be in the discretion of the Master to determine what books papers or writings are to be produced, and when and for how long they are to be left in his office; or in case he shall not deem it necessary that such books, papers, or writings should be left or deposited in his offices, then he may give directions for the inspection thereof by the parties requiring the same, at such time and in such manner as he shall deem expedient.

## LXI.

That all parties accounting before the Masters shall bring in their accounts in the form of debtor and creditor: and any of the other parties who shall not be satisfied with the accounts so brought in, shall be at liberty to examine the accounting party upon interrogatories as the Master shall direct.

## LXII.

That all such accounts when passed and settled by the Master shall be entered in a book to be kept for that purpose in the Master's Office, as is now the practice with respect to Receiver's accounts, and with proper indexes, in order to be referred to as occasion may require.

## LXIII.

That the Master in acting upon the Order of the Court of 23d April, 1796, shall be at liberty upon the appointment of a receiver, or at any time subsequent thereto, in the place of annual periods for the delivery of a receiver's accounts and payment of his balances, to fix either longer or shorter periods at his discretion; and when such other periods are fixed by the Master, the regulations and principles of the said Order shall in all other respects be applied to the said receiver.

## LXIV.

That in every Order directing the appointment of a receiver of a landed estate, there be inserted a direction that such receiver shall manage, as well as set and let, with the approbation of the Master; and that in acting under such an Order it shall not be necessary that a petition be presented to the Court in the first instance, but the Master, without special Order, shall receive any proposal for the management or letting of the estates from the parties interested, and shall make his report thereon, which report shall be submitted to the Court for confirmation in the same manner as is now done with respect to reports on such matters made upon special reference; and until such report be confirmed, it shall not give any authority to the receiver.

## LXV.

That all affidavits which have been previously made and read in Court upon any proceeding in a cause or matter may be used before the Master.

## LXVI.

That where upon an inquiry before the Master affidavits are received, there no affidavit in reply shall be read, except as to new matter which may be stated in the affidavits in answer, nor shall any further affidavits be read unless specially required by the Master.

## LXVII.

That the Master shall not receive further evidence as to any matter depending before him after issuing the warrant on preparing his report; but that he shall not issue such warrant without previously requiring the parties to show cause why such warrant should not issue.

## LXVIII.

That no warrant to review any proceeding in the Master's Office shall be allowed to be taken out, except by permission of the Master, upon special grounds to be shown to him for that purpose; and the costs of such review when allowed shall be in the discretion of the Master, and shall be paid by and to such persons and at such time as he shall direct.

## LXIX.

That the Master shall have power at his discretion to examine any witness *viva voce*, and in such case the subpoena for the attendance of the witness shall, upon a note from the Master, be issued from the Subpœna Office; and that the evidence upon such *viva voce* examination shall be taken down by the Master, or by the Master's clerk in his presence, and preserved in the Master's Office, in order that the same may be used by the Court if necessary.

## LXX.

That in all matters referred to him, the Master shall be at liberty upon the application of any party interested, to make a separate report or reports from time to time as to him shall seem expedient; the costs of such separate reports to be in the discretion of the Court.

## LXXI.

That where a Master shall make a separate report of debts or legacies, there the Master shall be at liberty to make such certificate as he thinks fit with respect to the state of the assets; and every person interested shall thereupon be at liberty to apply to the Court as he shall be advised.

## LXXII.

That the Master shall be at liberty to examine any creditor or other person coming in to claim before him, either upon written interrogatories or *viva voce*, or in both modes, as the nature of the case may appear to him to require, the evidence upon such examination being taken down at the time by the Master or by the Master's clerk in his presence, and preserved, in order that the same may be used by the Court if necessary.



## LXXIII.

That if any party wishes to complain of any matter introduced into any state of facts, affidavit or other proceeding before the Master, on the ground that it is scandalous or impertinent, or that any examination taken in the Master's office is insufficient, he shall be at liberty, without any order of reference by the Court, to take out a warrant for the Master to examine such matter and the Master shall have authority to expunge any such matter which he shall find to be scandalous or impertinent.

## LXXIV.

That the Master in deciding on the sufficiency or insufficiency of any answer or examination, shall take into consideration the relevancy or materiality of the statement or question referred to.

## LXXV.

That in cases where estates or other property are directed to be sold before the Master, the Master shall be at liberty, if he shall think it for the benefit of the parties interested, to order the same to be sold in the country at such place and by such person as he shall think fit.

## LXXVI.

That where a Master is directed to settle a conveyance, or to tax costs, in case the parties differ about the same, there the party claiming the costs, or entitled to prepare the conveyance, shall bring the bill of costs or the draft of the conveyance into the Master's office, and give notice of his having so done to the other party; and at any time within eight days after such notice, such other party shall have liberty to inspect the same without fee, and may take a copy thereof if he thinks fit; and at or before the expiration of the eight days, or such further time as the Master shall in his discretion allow, he shall then either agree to pay the costs or adopt the conveyance, as the case may be, or signify his intention to dispute the same; and in case he dispute the same, the Master shall then proceed to tax the costs or settle the conveyance, according to the practice of the Court.

## LXXVII.

That whenever in any proceeding before a Master the same solicitor is employed for two or more parties, such Master may at his discretion require that any of the said parties shall be represented before him by a distinct solicitor, and may refuse to proceed until such party is so represented.

## LXXVIII.

That such of the foregoing Orders as limit or allow any specified time for any party to take any proceeding, or for any other purpose, shall only apply to cases where the period from which such specific time is to be computed shall be on or subsequent to the first day of Easter Term now next ensuing.

## LXXIX.

That such of the foregoing Orders as relate to the manner in which the costs of any suit or proceeding are to be taxed, and to the amount of costs to be paid on any occasion, shall not apply to any costs which shall have been incurred, or to the costs of any proceeding which shall have been had or taken previously to the first day of Easter Term next ensuing.

## LXXX.

That such of the foregoing Orders as relate to the course of proceeding in the offices of the Masters of the Court, or to the authority of the Masters, shall have effect from and after the first day of Easter Term next ensuing, and shall be acted upon by the Masters in all cases except where from the then advanced stage of any proceeding they are not practically applicable.

## LXXXI.

That subject to the regulations hereinbefore specified, the foregoing Orders shall take effect as to all suits whether now depending or hereafter commenced, on the first day of Easter Term next.

LYNDHURST, C.  
JOHN LEACH, M. R.  
LANCELOT SHADWELL, V. C.



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